TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

9:10 a.m. Tuesday, November 9, 2010

Room 120
John H. Reagan Building
105 West 15th Street
Austin, Texas 78701

BOARD MEMBERS PRESENT:

Victor Vandergriff, Chair Cheryl E. Johnson, Vice Chair Johnny Walker Ramsay Gillman Jim Campbell Laura Ryan Victor Rodriguez

STAFF MEMBERS PRESENT:

Ed Serna, Executive Director Brett Bray, General Counsel

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A. ADMINISTRATIVE UPDATES

1 PROCEEDINGS 2 MR. VANDERGRIFF: Good morning. The first 3 order of business is to take a roll call of the members and establishment of a quorum. Cliff Butler is absent 4 5 today and will not be attending. 6 Johnny Walker? 7 MR. WALKER: Present. 8 MR. VANDERGRIFF: Ramsay Gillman? 9 MR. GILLMAN: Present. 10 MR. VANDERGRIFF: Vice Chair Johnson? 11 MS. JOHNSON: Present. 12 MR. VANDERGRIFF: Jim Campbell? 13 MR. CAMPBELL: Present. 14 MR. VANDERGRIFF: Laura Ryan? 15 MS. RYAN: Present. 16 MR. VANDERGRIFF: Victor Rodriguez? 17 MR. RODRIGUEZ: Present. MR. VANDERGRIFF: And the Chair, Victor 18 19 Vandergriff, I'm present as well. So we do have a quorum. 20 The next item of business is to ask if there's 2.1 any member of the public that wishes to comment on any 22 item of importance going before this Board.

(No response.)

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MR. VANDERGRIFF: Seeing none, we'll remind everyone that we will have opportunities during the course

of our agenda to obviously public comment.

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I do want to just very briefly note today that we're going to go a little out of order. I'm on 1C right now, and that is because we do -- we had a death in our legislative family, if you will, in Chairman Edmund Kuempel. His funeral -- or internment service I believe is here later at the capital at the Sims State Cemetery, and we are going to allow the -- there's several members here who want to attend that, or members of the audience.

And so we're going to take out of order on our agenda here, shortly after the consent agenda, the consideration of our Board's legislative priorities. So I want to note that to the audience. And if any of you need to get out and make a phone call to make sure if there's someone here that's going to participate in that, please do so at this point.

 $\hbox{ The next item is the consent agenda, and I} \\ \hbox{would ask that Bill Harbeson and Molly Cost come up.}$

Go ahead, Bill.

MR. HARBESON: Good morning. My name is Bill Harbeson. I'm the Director of the Enforcement Division for the Texas Department of Motor Vehicles. The first four items on the consent agenda arise from the Enforcement Division, and they are either in the nature of agreements where the parties have reached an agreement to

resolve the matter, or in the last two categories, cases 1 2 that we're actually -- are being dismissed by the staff. 3 The originals of these have been provided, or 4 had been made available to you, and the staff today is 5 asking for approval of these orders. MR. WALKER: So move. 6 MR. CAMPBELL: Second. 7 8 MR. VANDERGRIFF: We have a motion by Board 9 member Walker and a second by Board member Campbell. Any 10 requests to take any of these items off the consent 11 agenda? 12 (No response.) 13 MR. VANDERGRIFF: Now we are considering all of 14 the consent agenda items, you ask at this point all 15 through Number 2? 16 MR. HARBESON: This would be 2A, B, C, and D. MR. VANDERGRIFF: All right. So that's the 17 18 consent items from page 1 all the way -- almost to the end 19 of page 6. 20 MR. RODRIGUEZ: Just for the record, it's 2A 1 2.1 through 25? Is that right? 22 MR. HARBESON: Yes, there's 25 items in 2A. 23 MR. RODRIGUEZ: And 2B 1 through 7? 24 MR. HARBESON: That's correct. 25 MR. RODRIGUEZ: 2C 1 and 2?

	'
1	MR. HARBESON: Yes, sir.
2	MR. RODRIGUEZ: And 2D 1 through 4?
3	MR. HARBESON: That's correct, sir.
4	MR. RODRIGUEZ: 2E 1 through 2? Yes?
5	MR. HARBESON: Yes.
6	MR. VANDERGRIFF: All right. We have a motion
7	and a second. Any further discussion?
8	(No response.)
9	MR. VANDERGRIFF: All right. I'd ask you to
10	raise your right in support of the motion, please.
11	(A show of hands.)
12	MR. VANDERGRIFF: The motion carries
13	unanimously. Again, Board member Butler is absent today.
14	Thank you very much.
15	All right. Our next item, as I noted we're
16	on Number 3, which we're actually going to skip that and
17	go to 4B, which is Board legislative priorities. And did
18	want to note a couple of things for the audience. The
19	first is that we're really looking over two bills that the
20	Agency has that are bills, one, Vision 21, that's the
21	title we've been using. It was the previous bill that was
22	up before the legislature in the 2009 session. It has
23	been updated and I will certainly not take much time to go
24	through that, Vice Chair Johnson will.

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And the second is what we've, I guess, titled

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the DMV bill, which is going up in administrative

amendments that the Department believes would help in the

efficiency of the Agency, and that has also been vetted.

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And with that I will turn it over to Vice Chair Johnson.

MS. JOHNSON: Good morning everybody. I'm not going to go through a long presentation on what our purpose is here. As everybody knows, it is the Chairman's responsibility, it's been legislated, to gather all the information, legislative changes that might be necessary that would help us facilitate the Department's purpose.

And so with that in mind, we've gone through 3097, there was some items that really needed to be cleaned up, and then Senator Corona's SB 1507, which would have made it through the session had it not been for other bills that were being considered on the House side.

So we took those and with the help of a team, a wonderful team of people both inside and outside of the Department, we took those proposals after they were prepared -- and thank you, Jennifer, for all that hard work, and Deborah for all the unbelievable hours that we've all spent trying to get all this out there and scheduling all the appointments -- we met with the stakeholders last month and all of the questions that they had and the input has been submitted.

And there were a couple of things that are

outstanding that it was not appropriate for either myself or any single member of this Board to make a decision on. So I'm bringing voting conflicts, which we really need an opinion from the Board on, delegation of warranty performance cases, contested cases, and cure all which we need to decide whether these are items that we want to delegate or, you know, how do we want to handle these particular items, and I need the perspective of all the Board members on those.

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Now I have received today information from the Alliance of Automobile Manufacturers that I have not had a chance to review, but I hope that any of the stakeholders who have outstanding issues, what I've asked them is to bring those forward to the Board so that all of you can hear what their input or concerns were. Overwhelming these bills were accepted and every stakeholders without exception commented that they were very pleased that this Agency has taken a different path from others and involved everybody who's going to be affected, which I think was a wonderful thing, it says a lot about our Agency and this Board.

So I would like -- either we can take these or we can receive the input from our different stakeholders in advance so that maybe that information would be something you need to hear to hear how they feel,

especially those that represent your different industries. 1 2 Does the Chairman have a preference? 3 MR. VANDERGRIFF: Well, no, the only thing I 4 would ask at this point, I don't know if any of the 5 members of the Board, on the basic bills themselves -they were, as you noted, provided the bill analysis and 6 7 the copies of the bills themselves and a little bit -- a lot of detail. 8 9 Did anybody have any just general questions 10 about what was contained in those bills that you had some 11 issues, concern, question -- oh, and remember, please, 12 everyone, to turn your mike on when you are speaking. MR. WALKER: Well, this --13 14 MR. VANDERGRIFF: Before you get to the --15 there was some issues that she was going to cover in a 16 second, but I just want to know if there's any thought on the bills themselves. 17 MR. WALKER: Well, I've read all these bills 18 19 and I guess the summary in the front up here, and Section 20 13, I have a question on that because we're giving a --21 MS. JOHNSON: In which bill, sir? The DMV 22 or --23 MR. VANDERGRIFF: I believe he has --24 MS. JOHNSON: The small one is the DMV --25 MR. WALKER: The bill analysis that I read, you

1 know, had a -- page 3 on the front where we're taking a 2 protest where a dealer has 60 days to protest the 3 termination of his dealership down to 15 days. I'm not real sure that that's adequate time to take and file a 4 5 protest to a cancellation of a license. MR. VANDERGRIFF: I don't believe that was the 6 7 intent of that provision. 8 Mr. Bray, would you like to address that, or 9 have someone address that? 10 MR. BRAY: Yes, I'd like Molly to --11 MR. VANDERGRIFF: All right. MR. BRAY: -- if the Board wants, to try. 12 MR. VANDERGRIFF: It's Section 2301.453. 13 14 MS. COST: I'll be happy to. 15 MR. BRAY: Yes --16 MR. WALKER: Let me make sure I understand my question first. It is currently 60 days to protest the 17 cancellation of a license. Is that correct? 18 19 MS. COST: Yes. 20 MR. WALKER: And we want to change that to 15 21 days? 22 MS. COST: No. 23 MR. WALKER: Well, that what this says. 24 MS. COST: Actually, what -- there are two

different types of notice of termination, one where the

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dealership business is ongoing and the manufacturer has to give at least 60-day notice of the termination and the dealer has at least 60 days to file a protest with us.

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The other is what's called a 15-day notice of termination. That's when the dealership has shut down and it's not from act of God or anything like that. The dealership has just stopped operating. Currently under the statute the manufacturer is able to give what -- a 15-day notice of termination. And the way the protest provision is written, it's unclear as to whether or not the dealer has to protest that 15-day of termination within 60 days or within 15 days.

The reason you want to give the dealer an opportunity to protest before the termination takes effect is because once they protest, there's a stay put in place and they get to continue under that franchise while a hearing is going on. What's happening right now is that 15-day notice, it takes effect, it says you're terminated within 15 days, but the dealer has up to 60 days to protest that? So we're trying to sync the 60-day with the 60-day, and the 15-day with the 15-day notice of protest.

MR. VANDERGRIFF: The other way is the --

MR. GILLMAN: The language --

MR. VANDERGRIFF: -- otherwise technically they could fall through a gap, they could actually be

terminated while they still have a right to protest the 1 2 termination, but they could already be out of business if 3 they haven't done it potentially in that 15-day period. MALE VOICE: We could live with that one. 4 5 MALE VOICE: That's a good point. 6 MR. VANDERGRIFF: Yes. 7 MALE VOICE: Are going to go over these one more on here? 8 9 MR. VANDERGRIFF: Those issues we are. 10 just -- my suggestion was, just like Mr. Walker jumped in 11 on one, that if a Board member had some issue that wasn't 12 on that paper, that they'd -- when they were reading the bills, that they would be able to do that, so. 13 14 MS. RYAN: I have a --15 MR. VANDERGRIFF: -- go ahead. 16 MS. RYAN: -- clarification on Section 4, the DMV bill, where it states -- and to clarify that the 17 18 franchise dealer must apply for a separate license for 19 each separate and distinct showroom. Can you help me 20 understand the intent of the change? MR. BRAY: That has been the practice of really 2.1 22 since the beginning -- since the inception of the -- of 23 regulation of the franchise system of franchise dealers

that it's always been interpreted -- the way the statute

reads has always been interpreted to mean that a showroom

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1 is a licensed facility, so as you're familiar, in the 2 Houston market some dealers can have three or four 3 showrooms on a large complex. Well, that's three or four 4 licenses. 5 But it's always been a little bit -- it hadn't 6 been as clear as it could be. This was an opportunity to 7 make it more clear, and we were taking the opportunity. 8 Do you want to add to that? 9 MS. COST: No, that's exactly it. 10 MS. RYAN: Okay. I'm not sure it's clear. So 11 a showroom can be a distinct franchise. Can you have 12 multiple showrooms for one franchise? 13 MS. COST: Yes. It doesn't happen very often, 14 but we do have it, yes. 15 MS. RYAN: And then we would require a license 16 for each showroom, even though it is the same franchise. MR. BRAY: That's right. That's right. 17 MS. RYAN: New and used? 18 19 MR. BRAY: No. 20 MS. COST: Used doesn't have a franchise. Ιf it's --2.1 22 MS. RYAN: If it's under the --23 MS. COST: It would have to be -- the 24 definition of dealership is where new motor vehicles are

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being sold. So it's only new motor vehicles for a

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They'd be

franchise license. 1 2 MS. RYAN: Even if the franchise -- even if 3 that showroom -- the used showroom is under the particular franchise license, then it falls under the new? 4 5 MR. BRAY: Used showrooms just fall under the 6 general GDN license --7 MS. RYAN: Okay. 8 MR. BRAY: -- period. And, yes, you could 9 have multiple licenses if you have the same franchise in 10 multiple locations, but as Ms. Cost pointed out, I don't 11 know if I've ever seen that, it's pretty rare, it's more 12 of the case that you'll have a Toyota in one showroom and 13 you'll have Jeep or something in another. And those are

MS. RYAN: It is fairly common now where a Toyota dealership may have a completely separate roof top for new and a completely separate roof top for used. And that would be one license. Right?

separately licensed if there's two showrooms.

on one license together if there was one showroom.

MS. COST: That would be one license --

MS. RYAN: Okay.

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MS. COST: -- the franchise license for the new location and the general distinguishing number would cover both of them.

MS. RYAN: Okay. I just wanted to clarify.

Thank you.

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MR. VANDERGRIFF: I think there -- on this point is there some issue or perhaps clarification that has been suggested to make that more clear on the franchise issue? I believe the Automotive Alliance had some language they suggested in that regard. Anyone with that?

(No response.)

MR. VANDERGRIFF: Well, we can bring it back up later, but I didn't know if anybody was familiar with that.

(No response.)

MR. VANDERGRIFF: All right. Okay.

MS. RYAN: I have the feedback. I mean was actually discussing this morning on clarification on what the intent of their feedback was and the clarification that I just got will probably take additional discussion to make sure that their feedback hits what we meant it to say.

MR. VANDERGRIFF: Okay. Well, I guess the question I saw that the language suggestion was on -- it's on page 10 of our bill, that -- it starts on page 9, a franchise dealer must apply for a separate license under this section for each separate and distinct dealership showroom as determined by the Board. We added the term

2 vehicle franchise. 3 MS. RYAN: Correct. And then I -- we discussed this morning and then there was some question on the 4 5 actual intent of the change, so. MR. VANDERGRIFF: Okay. So we needed 6 7 further -- think about that one. MS. RYAN: I just want -- I'd like to be sure. 8 9 MR. VANDERGRIFF: Okay. Then that's fair. 10 That's fair. I just didn't know if that was something 11 that we wanted to move on out and I'm hearing no. So 12 further discussion is necessary. Okay. Great. 13 Any other questions on the -- just the general bills themselves, the two of them? 14 MS. JOHNSON: I have a couple of comments, but 15 I would like to kind of wait until we hear from the 16 stakeholders and see if they cover those issues. 17 MR. VANDERGRIFF: Absolutely. Okay. Well, I 18 19 guess since there's nothing on the rest of the bills 20 themselves, I know we did have some issues, and I'll turn 2.1 it back to you. 22 MS. JOHNSON: There were a couple of 23 outstanding items that, in addition to the items for Board 24 consideration, that different stakeholder groups had 2.5 issues with, as myself, and I was very pleased because we

showroom, and the suggestion was it would be as a motor

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18 had a wide range of Tax Assessor-Collector offices covered 1 2 different sizes when we had a telephone conference with 3 that group, and we all, it seemed like, honed in on 4 exactly the same things, and I want to thank staff and the 5 Chairman for removing some of those things that were of a 6 major issue. 7 But there are a couple. At this point I would prefer that the Board hear the information from the 8 9 stakeholders so that they can see it's not a Vice Chair 10 drive. So with your consent, Mr. Chairman, we'll go ahead

MR. VANDERGRIFF: Sure.

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and receive --

MS. JOHNSON: -- input from the stakeholders.

Do we have cards --

MR. VANDERGRIFF: We do.

MS. JOHNSON: -- to read out?

MR. VANDERGRIFF: We have three cards that I have received, and the first is from Luanne Caraway with the Hays County Tax Assessor-Collector.

MS. CARAWAY: Good morning.

MR. VANDERGRIFF: Good morning. Now what is -I'm not sure if the microphone is on there at the table.
Is it on? Okay. Great.

MS. CARAWAY: I want to thank you for allowing us to be here this morning, and speak to the Board. And I

want to thank the Board for working with our association in these legislative issues.

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We did have a conference call, as Ms. Johnson mentioned, and did bring up some issues that were of major concern to a number of the tax assessors in that call, and some of those things have been addressed and we appreciate that very much. There are -- well, there is one thing in particular that I'd like to bring up that I don't think has been addressed totally yet, and that has to do with the forms being available to the tax assessors.

They make them available online, but there are still some of those small counties out there that don't have access to the internet, believe it or not. So we would like to have a little word changed from "or" to "and" so that if requested by a tax office, those forms would be made available by the Department instead of just having to send someone to the internet to pull those down. So if we could just change -- I believe it's --

MR. VANDERGRIFF: I'm just going to ask for -I think you're doing this -- for purposes of the Board, if
you could direct them to where you're --

MS. CARAWAY: Okay. I believe this is in the big bill, the Vision 21 bill, and the first place that it shows up, I believe, is in Section 4, which is -- for the Code, it's Section 501.131, and it talks about --

1 MS. JOHNSON: The Board's easy reference, 2 that's on page 8. 3 MS. CARAWAY: I'm sorry. MS. JOHNSON: The first reference --4 5 MS. CARAWAY: Okay. 6 MS. JOHNSON: -- is on page 8, and I think --7 I don't want to get ahead of you -- the second one is on 8 125, it shows the same --9 MS. CARAWAY: Right. It shows up a couple of 10 times. It talks about the Department may adopt rules to 11 administer this chapter, and in B it says, The Department shall post on the internet, or provide each county 12 13 assessor-collector with a sufficient supply of any 14 necessary forms. We would just like to see that "or" changed to "and" so that if requested by a tax assessor-15 16 collector, that that would be made available by sending 17 them the forms instead of pulling those off of the 18 internet. 19 MR. VANDERGRIFF: May I ask a question? If you 20 added to that "and if requested," would that be sufficient 2.1 to do that? I will say that one question I had in an age 22 of trying to save money, if you just put an "and" there, 23 The Department shall post on the internet and provide,

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MS. CARAWAY: Yes, I think that would be fine.

then they'd be duplicating that. But if --

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1	MR. VANDERGRIFF: Okay.
2	MS. CARAWAY: I think that would work for us.
3	I think just making it where
4	MR. VANDERGRIFF: You have that option.
5	MS. CARAWAY: Exactly.
6	MR. VANDERGRIFF: Yes.
7	MS. CARAWAY: Exactly.
8	MR. VANDERGRIFF: Okay.
9	MS. CARAWAY: So I'm fine with that.
10	MR. VANDERGRIFF: All right. That
11	FEMALE VOICE: Yes.
12	MR. VANDERGRIFF: Mr. Walker?
13	MR. WALKER: Yes, I don't understand why we
14	need to change it because it says it's internet or, it's
15	one or the other, it's not we're providing both to you
16	there, it's not and.
17	MS. CARAWAY: I think the only concern there,
18	Mr. Walker, was the fact that if it said "or," if the
19	Department chose not to supply those forms at a particular
20	point, and the quantity maybe that that county needed, it
21	might because I'm not saying that's
22	MR. WALKER: Has that ever happened?
23	MS. CARAWAY: the case now.
24	MR. WALKER: Has that ever happened?
25	MS. CARAWAY: I don't know that it's ever

happened because internet use of the forms is so new to us.

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MR. WALKER: Have we ever not provided the forms when they've been requested to the sufficient amount?

MS. CARAWAY: Not that I know of. But there was a concern that they may not at some point in the future.

MS. JOHNSON: If I may jump in here, Mr. Walker, and let you know what this is, is the language currently does not say -- if you look at this, it says post on the internet, "or" is added language. The way it works right now is those forms are available online, and many of us download those form, especially the ones that we don't use very often.

But the forms that we're using every single day, if this is left as is, I don't think it's the people that are here today, but the people that are here 10 years from now are going to say, Well, we don't have to it because we put them on the internet, and this says or and they're on the internet and we no longer have to do this.

And so for future situations, we wanted to make it real specific that because there are -- we have I think about five counties that are not online, and this doesn't say anything about their accessibility to the internet,

this talks about once they post them on the internet 1 2 they're done. And unless you're going to increase the 3 fees that we're being paid, we shouldn't be asked to pay for the forms, and this is a mandate as written. 4 5 MS. CARAWAY: Right. That was the discussion that we had with the counties of different sizes. 6 MR. VANDERGRIFF: Certainly to me the changing 7 it to "and if requested" solves that dilemma where we 8 9 don't have to automatically mail --10 MS. CARAWAY: Right. 11 MR. VANDERGRIFF: -- to everybody, but if requested they can get that. It would just seem it solves 12 13 it. 14 MR. RODRIGUEZ: What would be the fiscal 15 impact, Mr. Chairman? 16 MR. VANDERGRIFF: Of that, there is no additional --17 MR. RODRIGUEZ: No additional --18 19 MR. VANDERGRIFF: -- fiscal impact from what 20 we're already doing. In fact, I would think we'd 21 potentially be better since we would be able to post on 22 the internet, and unless requested, we wouldn't have to 23 mail them out. 24 MR. RODRIGUEZ: Yes. 25 MR. VANDERGRIFF: So I believe if any, it'd be

positive.

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MS. CARAWAY: And that's the only thing that I really still have a concern about. I did, while I was here, want to voice that I really appreciate the Board working with us and allowing us to have a seat at the table.

We do have one issue that we are probably going to bring up legislatively that we would like to seek your input, or your support on. I can't totally share it with you yet because our board approves on Monday, but it has to do with title service agencies and just cleaning up that language a little bit because we have a number of, the larger counties specifically, Harris, Tarrant, those areas that are having problems with these title service companies and the way they're doing business. So we would just like to tighten down some regulations with them. So that's something we'll be bringing back to you in the very near future to hopefully get your support on.

MS. JOHNSON: Ms. Caraway, is it possible that those issues might be able to be addressed by rule, and if the TACA board acts, and I think I've seen some of the language, particularly that Mr. Moore, J.R. Moore --

MS. CARAWAY: Right.

MS. JOHNSON: -- has drafted, that if it's not necessary to do it legislatively, if we can do it by rule,

if you would submit that to us and allow general counsel 1 to review it and see if that's possible. It might be a 2 3 correction that we can make today rather than legislatively. But would you -- would that --4 5 MS. CARAWAY: We certainly can look at it --6 MS. JOHNSON: Okay. MS. CARAWAY: -- from either direction. Our 7 main thing is to just get it tightened down so that those 8 9 counties don't have those issues any longer. 10 MS. JOHNSON: Thank you. 11 MR. BRAY: And if we might have -- I think the 12 issue is whether or not the Board can change --13 MS. CARAWAY: Correct. Because they do have to 14 licensed through the county tax collector now, and it's just trying to tighten that down as to -- the biggest 15 16 problem right now is there is no penalty if they don't go 17 through the steps that they're supposed to, so we're trying to add some penalty to that if they don't 18 19 cooperate. 20 That's all I have, unless you all have 2.1 questions. 22 MR. VANDERGRIFF: Thank you. 23 Does anybody have any questions of Ms. Caraway? 24 (No response.) 25 MR. VANDERGRIFF: Thank you for taking time out

of your schedule to come.

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MS. CARAWAY: And just one other quick comment. I just want to say how much appreciate what's happening with DMV, working with Mr. Serna and his Department, it has really been a great help to us in our jobs and doing what we need to do. So thank you --

MR. VANDERGRIFF: Good.

MS. CARAWAY: -- very much for that.

MR. VANDERGRIFF: Thank you.

We have -- the next speaker card that I have is Rob Rraziel with TADA.

MR. BRAZIEL: Good morning, Mr. Chairman, members of the Board. My name is Rob Braziel. I am the CEO for Legislative Affairs at the Texas Automobile Dealers Association. We appreciate the opportunity to comment today.

I want to thank Vice Chair Johnson for all of her efforts. She not only sought our advice as she worked this through the process, but also made some important revisions as the process moved forward, and I know she was ably assisted by the staff. We appreciate all their work.

I just wanted to flag a few items in the Motor Vehicle bill, the Motor Vehicle Division bill. The first item is in Section 10, which in the version I have is page 13. And the language there would broaden the reach of

violations of Board rules, aiding and abetting and advertising violations. It would replace "from dealer" to "a person," and I think you may want to think through that, whether that broad jurisdiction is the right answer.

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I think that certainly if your attempt is to get at other license holders besides dealers, we're going to be covered either way. But if you want to cover other license holders, there is a license holder definition in the statute. I don't know if the intent is to do that, or is it to get to any person who violates any of these things.

The second issue, which was the issue that
Board Member Walker brought up about the 15 days, we do
have some concern about whether 15 days is long enough to
allow a protest right. We certainly understand the desire
to try and sync up the statute. You know, another way to
do that is to potentially increase the number of days on
both accounts, say it's 20 days, you could make both 20
days as opposed to both 15 days. We're just concerned
that that may be too short a window in those cases.

In Section 15, page 17, there is a change in, I believe it's 476 -- 2301.476. Currently the current practice, except as provided in that section, manufacturers or distributors are not allowed to own a dealership. That has been tested in courts and applies to

both new and used. There is an attempt in this to put both franchised or non-franchised into the statute.

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While that isn't troublesome in the sense that that's what we're talking about when we're talking about just the dealership, it is a concern to the extent that you wonder is there something else out there that we're not covering by saying franchised or non-franchised.

Page 19, which is Section 19, there is an issue with regard to heavy duty truck dealers in there.

Currently a motor vehicle -- one definition of motor vehicle is a vehicle over 16,000 pounds, which it's the engine, the axle, and the transmission is considered a motor vehicle and therefore heavy duty truck dealers have a franchise when they have -- for that engine, transmission, or axle no matter what the brand manufacturer is.

It's important in the sense that that's triggers a protest right for a heavy duty truck dealer if somebody wants to come in with a different -- or with a same make or a same engine, axle or transmission. And I certainly understand the desire amongst the staff that that is a complicated process to figure out not only the makes, but also the engines, the axles and the transmissions, and we certainly understand that. But at the same time, that does cause a heavy duty truck dealer

to lose an important protest right.

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And I think it may be helpful to separate out cases where a different manufacturer decides to put an engine, a different engine that affects somebody else, as opposed to somebody coming in with just an engine and competing without a protest right in that regard.

Page 31, Section 35 on advisory committees, I know that the Board has looked at this issue on a number of occasions. We continue to believe that it is an important component to have input into the process like we've done on these bills, and I think that, you know, we would like to certainly see, no matter what the words on the page area, that we have some type of formalized structure to make sure that we can continue to provide that input.

Section 36, which is page 32, there is some language there about duties assigned by the Board to the Executive Director and thereby the Executive Director having the ability to assign those to other employees. While the language on the page doesn't trouble us at the moment, I do think it provides a discussion point for what are the appropriate duties for the Board, and obviously that's you all's decision as you all move forward, and this is your legislative product.

But I think it might be helpful to talk about

things that -- in terms of what you want your delegation authority to be, is to say, you know, we want to have the ability to delegate, or we want to have the ability to hear, but at the same time, are there things like rulemaking or issuing final orders in contested cases that you don't want to delegate. And it seems to me that it would simplify a lot of things if you just said, We have a broad authority to delegate, except for things that you want to preserve.

I want to thank the Vice Chair and the staff for seeking our input. There were some provisions that we were concerned about dealing with advertising, dealing with penalties, and I think that those have been addressed satisfactorily, and we appreciate that.

MR. VANDERGRIFF: I would ask -- it might be helpful for the Board, since most are not as familiar with issues, perhaps would it be all right if you stayed there up at the dias and either, I guess probably Molly Cost should come up and maybe not -- this is not a rebuttal, it's just to make sure that the Board has the benefit of what was the thought process in bringing some of these in.

MR. BRAZIEL: Sure.

MR. VANDERGRIFF: You may have to -- I know

Molly took notes, but we may have to bring those up

individually again. So, you know, I'm -- for example, the

very first one that you mentioned I believe was on page 13, which was in essence the word "dealer" was replaced with "person."

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Can we have an understanding from the Board's perspective why that's the case?

MR. BRAY: If it'd be all right, I'd like to start that discussion before Ms. Cost.

MR. VANDERGRIFF: Oh, absolutely. Whoever's appropriate to do it. I just --

MR. BRAY: Well, the reason is there was a period that I want to give by example where she would have been an administrative law judge and therefore shielded off and maybe not know these things.

And of course this is certainly the policy call and you can restrict it -- restrict the Board's jurisdiction to licensed dealers if you choose. I can tell you that historically it has been broader and it has been broader really for the benefit of the industry.

For example, there was a period, we don't have it today so much, there was a period where brokers attempted to infiltrate the franchise system and they're not licensees, the credit unions they used to do this weren't licensees, and the Agency took them on several times successfully through the administrative process because of the ability of the Board at that time to

address any person with civil penalties that violated the Code, not just a dealer.

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The same goes for curbstoners. Some are licensed obviously, and that's good; some are not. Now the truth is, on the unlicensed curbstoners -- if the Board would [indiscernible] used, has been used, historically for what is a non-licensee.

The same goes for newspaper, radio and television. Believe it or not there are some dealers who get persuaded by one or more types of media to run certain types of ads, and those ads can -- makes the dealer run afoul of the advertising rules. In those instances, it's good to have -- it's good for the Agency to have the ability to address who might be really behind the violation.

So that's some of the historical, and Ms. Cost can really address current -- the current situation.

MS. JOHNSON: Before we get into this though, let me -- it might be that we can cut some of this short if I make a recommended change. Now what I understand generally with regard to statute, and we have lawyers here --

MR. VANDERGRIFF: Can I ask one quick question?

Does the Board kind of -- does that capture for the rest

of the Board members kind of thought process?

MR. GILLMAN: I'd like to hear Mr. Braziel's 1 2 response to some of this. 3 MR. VANDERGRIFF: Yes, I would too. MR. GILLMAN: I mean I'd like to hear a two-way 4 5 conversation so I fully understand it. MR. VANDERGRIFF: And that's what I was 6 7 suggesting is --8 MS. JOHNSON: But if I may, because this might 9 solve it without us getting into debate, this chapter is 10 about dealers, and I thought that this was also about 11 advertising. But if we added the language "a person" --12 now it's not going to address curbstoners, but I'm not 13 certain that this is where we would address curbstoners 14 and you'll all have to tell us that, but if we added the 15 language "a person associated with a dealer licensed by 16 the Department," will that get you the majority of what 17 you need? It's not going to address curbstoners, but 18 19 would that not accomplish what you're trying to do, 20 because let's say -- well, I guess --2.1 I don't think any of that --MS. RYAN: 22 MS. JOHNSON: -- answer me if that will deal with it. 23 24 MS. RYAN: -- was what Mr. Bray was 2.5 referencing. Because he really broadened it, he really

did, to beyond dealers, and again, I'd like to comment, but I think what I heard was it got a lot broader versus an interchangeable.

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MR. RODRIGUEZ: I have a question that I'm throwing in before the answers get rolling out. And realizing that we're creating a wish list of things here, that ultimately the legislative committee will -- and before they get it a whole bunch of other people will get it, if it gets filed, and will go through some scrubbing process.

But it seems to me that when you're talking about a person, you're talking about a Penal Code kind of a business, which may already exist. I'm to really sure that a person as proposed here in this language fits with this particular recommendation. You're trying to criminalize something here with no penalty assigned to it, unless you take the general application of violation of the Code, you know.

So what I'm saying to you is, isn't this a Penal Code kind of a recommendation as opposed to an Occupations Code?

MR. BRAY: It's really an administrative penalty and not putting [indiscernible] for a long time seems to allow the Board to --

To me this is more like a syncing up -- or

actually it's a -- yes, it's more like a syncing up of that provision with the general powers provision of the Board to be able to find a violation of that by any person.

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I don't mean to be suggesting to you, really, even a position on this; I just wanted to point out for you where you're coming from historically and that I wanted some [indiscernible] in the past from being forgotten.

MR. RODRIGUEZ: And I understand. I'm just saying when you put a person in there, it could be -- we could, all of us could be violating this particular Code without realizing so, and I'm just -- being completely foreign to the chapter.

MR. VANDERGRIFF: Vice Chair?

MS. JOHNSON: My personal opinion is that this is extending our authority beyond what we really are trying to achieve here, because anybody sitting out here in the audience, as Mr. Rodriguez said, who violates a Board rule is then subject to penalty, criminal penalties.

And so I'm very concerned that we've expanded our authority beyond what's allowable under law, currently allowable under law, and I think we need to be more definitive. And whatever language that the Agency can recommend that will address those problems specific to

1 this chapter, I think that we would entertain. But this really -- just to change a "dealer" to a "person" is 2 3 overly broad. 4 FEMALE VOICE: It's page 13 and 14 in the small 5 bill, Section 10. MALE VOICE: Section 10. 6 7 MS. RYAN: Is it possible to -- I mean what I see is we've interchanged, but your description is broad, 8 9 so it seems like it's not just dealers, and dealer may not 10 be the right word, but business entity, you know, where 11 it's not just dealer or person, but it maybe needs three 12 or four categories of -- I don't know if we can put 13 curbstoners in there, but three or four categories of people that might be -- that this would apply to versus an 14 15 interchange. 16 I don't -- Ms. Cost, I don't know --MS. COST: I feel like I'm the wrong person 17 sitting here. I think it ought to be Bill, because this 18 19 really is more an enforcement issue. 20 FEMALE VOICE: It's okay. MS. COST: So --21 22 MR. VANDERGRIFF: Well, let me --23 MS. COST: -- I'd be happy to give up this 24 seat for now.

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MR. VANDERGRIFF: I apologize --

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MS. COST: That's okay.

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MR. VANDERGRIFF: -- for the wrong one. It was under the license side, so.

Do you have anything to add to --

MR. HARBESON: I think --

MR. VANDERGRIFF: -- go ahead.

MR. HARBESON: May I proceed, sir?

MR. VANDERGRIFF: Sure.

MR. HARBESON: Thank you. I think Brett hit the nail on the head when he said we have various people that are not licensees or a license holder or engaged in business activities that are part of the industry, and we could use this tool to help. He mentioned brokers. Well, in the absence of this, somebody could come in and engage in conduct the Code says is prohibited, and we need to be able to take some action against them.

There's been some discussion of curbstoners.

Our current practice to try to refer those to law enforcement, because there are some criminal sanctions available to the communities under 503 of the Transportation Code, but if they are unwilling or don't have the resources to take those actions, we then are left with no viable type of action that we could take against a curbstoner or somebody engaged in the business that we're regulating without having anything that we can do. So we

need this available administrative tool so that we can effectively handle those problems when they arise.

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MR. RODRIGUEZ: Mr. Chairman, may I -- and if that's the case, then probably we ought to infuse some language in here that suggests with the intent to do X, Y or Z, and that may narrow the scope of the application of person in terms of the word itself.

But the point I was at when I asked -- when the question was asked, Mr. Chairman, I mean I think we all -- I mean is it our intent here to hash out this, or generally direct you, because we could be here all day long on this particular subsection, and I think we get the idea, and --

MR. HARBESON: Yes.

MR. RODRIGUEZ: -- ultimately I think we ought to direct yourself or the Executive Director and say,

Look, this is what we're thinking, hash it out, put it together and --

MR. VANDERGRIFF: I agree, and that's what I was coming to. I think that the Board needs to -- you know, to make sure that everybody's clear, these bills have been worked on for some time, first internally and scrubbed and then an extensive amount of time outside with the industries and have come down to, all things considered, a rather narrow list of issues, you know,

maybe 10 to 12 total between the half a dozen that Mr.

Braziel listed, one from the tax assessor-collectors, and perhaps a couple of more.

So we're down to a fairly narrow grouping, and I think the Vice Chair, and certainly I, felt it was appropriate for the Board to hear those so that you're apprised, and I think you're giving, by your comments, some direction that perhaps the staff and the industries can work on.

The idea would be to do something that benefits the industry as a whole. These are revenue neutral bills that are to be beneficial and hopefully will be filed and sale with broad industry support in there. So whether there's controversy, the idea would be to back away from that, at least in general.

Mr. Braziel?

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MR. BRAZIEL: Well, I was just going to say, I mean the reality is dealers are going to be covered under either definition, so I'm, you know, I'm not talking about myself. I think it's just a question -- I raise it as a question for the Board how far do you want your jurisdiction to reach, particularly when it's not limited -- you know, under the way that this is worded, a person, you have jurisdiction over a person who uses false, deceptive or misleading advertising.

And I think that, you know, there needs to 1 2 probably be an effort to try and tie down the language, if 3 that's not what you intend. MR. VANDERGRIFF: What I would suggest perhaps 4 5 is between the two gentlemen sitting at the table and the rest of our staff, that this is an issue that could be 6 7 worked out. 8 MR. BRAZIEL: Sure. 9 MR. VANDERGRIFF: It's just, I think, can 10 worked based on the direction the Board's given. 11 The second item was the 15-day protest right. 12 MR. GILLMAN: Could I ask you a question about 13 that? 14 MR. VANDERGRIFF: Sure. I mean that's -- I'm 15 bringing that up and that may -- we may be shifting chairs 16 again. Isn't the intent of the 15-day 17 MR. GILLMAN: only for the dealer that is no longer in business? 18 19 MS. COST: That's correct. 20 MR. BRAZIEL: If he's closed for seven 2.1 consecutive days. 22 MR. GILLMAN: If he falls under the -- I don't 23 see much problem with it. 24 MR. BRAZIEL: Well, again, I don't think

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there -- we do not dispute a desire to sync up the

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statute. I think the question is -- for the Board, is the 15 days sufficient enough with an automatic, you know, right ending on that 15th day. And I, you know, I think that --

MR. GILLMAN: Well, he's already been closed for seven before you get to that point.

MR. BRAZIEL: Correct.

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MS. RYAN: Do we know historically if that 15 days has caused a problem?

MALE VOICE: Historically?

MS. COST: I don't think -- I've had the question from both sides, mostly, to be honest, from manufacturer attorneys saying, Do they still have a right to file a protest after this 15 days. I think what we've seen is the dealers hiring a lawyer who reads this and says, I'm going to go ahead and file this before the 15th day. But I can't remember off the top of my head if we've ever had a specific issue with it.

But I've had the question and so that's what led to putting this in here is to just try to sync it up so it was clear to everybody, including some ALJ who may be looking at jurisdictional issues or, you know, something like that, what it really was.

MS. RYAN: Have we historically had a concern that a dealer has been able to respond within the 15 days

1 that you're aware of --2 MR. BRAZIEL: Well, correct me if I'm wrong, 3 Molly ---- in addition to --4 MS. RYAN: 5 MR. BRAZIEL: -- currently he would have 60 6 days. 7 MS. COST: Well, that's the question. I mean I think some people read it as you have 60, other people 8 9 read it that you have 15. And then regardless of when the 10 protest needs to be filed, the next question is, do you 11 reinstate it -- do you reinstate the franchise if they 12 file the protest on the 20th day, when at the 15th day, 13 according to the statute, their franchise is terminated. 14 MS. RYAN: And technically they can't protest 15 it, they're terminated. Correct? 16 MALE VOICE: Because it's --MR. WALKER: When does the 15 days start? 17 MS. COST: From the receipt of the notice. 18 19 MR. WALKER: Certified mail? 20 MS. COST: Yes. And occasionally we -- you 2.1 know, I'll have issues, people say, Well, you know, 22 they're not picking up their mail, how do we know when 23 they receive it, or something like that. I mean those 24 tend to be fact questions that you can engage in, but it's

from the receipt of the notice, not from the sending of

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it.

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MR. BRAY: Yes. Fifteen days -- and the underlying issue is if somebody's going to file a protest, more than likely they're going to say, I wasn't really closed.

MR. WALKER: Not in my mind, you know, I read that last night, it just seemed 15 days was a real short period of time to file a protest for losing a franchise, that maybe 30 days is a more appropriate sync, both of them at 30 days.

MR. VANDERGRIFF: Well, Mr. Braziel earlier noted a 20-day syncing, which I'm not saying it's the right number, or 30 days, but it would seem to me that there should be a syncing of those two dates --

MR. WALKER: Yes.

MR. VANDERGRIFF: -- whatever that time frame is.

MR. BRAZIEL: We don't disagree with that.

MR. VANDERGRIFF: Okay. So --

MR. WALKER: Now lets come up with some dates.

MR. VANDERGRIFF: Well, my suggestion is, again, send that back, let them deal with that and bring it back. So they can deal with it.

MR. WALKER: Let's get on to that motor issue because I didn't understand that.

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MR. VANDERGRIFF: Well, make sure we follow. You had one about the -- on page 15, the amendment to 2301.476, which is the intent of the broadening of that from franchised, non-franchised, so is that Ms. Cost or Mr. Harbeson?

MS. COST: That's me.

MR. VANDERGRIFF: Okay.

MS. COST: The state statute as it currently reads just says dealer or dealership. And this Agency has gone through a couple of rounds of federal litigation with regard to whether or not those words mean just new motor vehicle dealer or also used motor vehicle dealer. what the court cases ultimately, after a lot of time and effort, said was it applies to both, new motor vehicle and used motor vehicle dealers.

So there can't be any manufacturer or distributor ownership in either one of those. And all this was, was an attempt to put that language in this Code so that people who come into the industry, again, so ALJs who are looking at jurisdictional issues, things like that, would have the benefit of them in the law as opposed to having to go find those court cases, or being made aware of them.

Those cases still exist, this is certainly not an attempt to undermine them. It's, frankly, an attempt

to kind of shore them up, just to make sure the words are there.

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MR. BRAY: And the average person can get a hold of one of these code booklets, but the 5th Circuit Court of Appeals opinion out of New Orleans and Fed. 2d is not that easy.

MS. COST: Right. It's a little more difficult. You got to know about it and then you've got to find it, and understand it.

MR. BRAZIEL: And I think the question really is, you know, if you look at the statute, it seems clear to us when it says, Own a dealer or dealership. That takes care of the entire possibility of the universe of these are not allowed, and we certainly understand the desire for clarification

But the question is, by inserting terms

"franchised or non-franchised" which were both defined,

the question is, if you're going from something that has
an outright band of saying only these two things are

banned, is there something else out there that we don't

know -- that is somehow different than those two things.

So, again, I don't think it's something that we're going to have a -- cause us major heartburn, but I do think that it is worth noting that you have language sufficient in the statute right now and that this is --

this may introduce some additional uncertainty, even though it's meant to provide the clarity.

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MR. VANDERGRIFF: Then on page 19, Section 19, that's the engine, axle, transmission issue.

MS. COST: Correct. Those of you in the audience who are engaged in the heavy truck industry, I apologize because I'm going to mess this up horribly, but because the engine -- what engines go in what trucks, I'm just pulling names out of the air here.

What this is intended to do is the engines, axles and transmissions that go into heavy duty trucks are considered separate motor vehicles, separate and distinct from the truck itself, the way the Code is worded. And so when we get an application from a heavy duty truck dealership to sell -- and here's where the making up stuff part comes in -- Kenworth trucks with Cummins engines and --

MALE VOICE: Allison.

MS. COST: -- Allison transmissions -- I was trying to think of another engine manufacturer -- Detroit diesel engines, there may be a PACCAR dealership right next door. Now the PACCAR dealership can't protest the Kenworth truck, but they may be able to protest the Cummins diesel and the Allison transmission and the Detroit diesel engine.

And quite honestly, I think in all the years
I've been doing this I've seen one or two protests filed,
neither one of which went to hearing, and what it ends up
doing is it keeps the applicant from being able to sell
the Kenworth truck even because he certainly can't sell it
without an engine in it or a transmission or an axle.

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And so even though it's not a protest by a PACCAR dealer of a Kenworth truck, in effect that's what ends up happening, or it's at least a delay in getting that license issued if we have to wait the 15-day protest period.

Now what I thought I heard during the comments was maybe that's not such an issue, it's possibly -- and we do have a very few number of dealers licensed who aren't selling the truck, they just may be selling the engine, axle or transmission and doing warranty service work, but maybe those should be the protestable situations that if that's the application we're getting where there's not a truck around the part, then a protest should be sent. But if there's a truck around the part, maybe that's not as big of an issue.

And again, it's, you know, certainly a policy issue from the Board, and something the staff's been doing for years and we can continue to do it, it just tends to be an issue sometimes for the truck dealer going, Why

can't I get my license. Well, because somebody has 1 2 protested the engine. 3 MR. VANDERGRIFF: Mr. Braziel, do you have --4 MR. BRAZIEL: Yes, I was just going to say 5 that, you know, I think Molly's right that we need to look at these, and these are different situations. And what we 6 7 have seen, at least recently in the market place, are 8 these entrants just selling the engines, or just selling 9 the transmissions, whatnot, when the dealer actually has 10 the franchise to sale and service those particular 11 vehicles. 12 And so I think that's the case I'm certainly more familiar with. We could certainly use Board Member 13 Rush today to help us through this one. 14 15 (General laughter.) 16 MR. VANDERGRIFF: Would it be appropriate for maybe the two of you and Mr. Rush to --17 MR. BRAZIEL: Sure. 18 19 MR. VANDERGRIFF: -- visit on this one --20 MS. COST: Certainly. MR. VANDERGRIFF: -- and settle it? You think 21 22 that --23 MR. WALKER: Let me kind of clarify a little 24 bit, because I buy a lot of big trucks. Okay. And I just 2.5 specify -- now PACCAR owns Peterbilt and Kenworth, and I

will buy, let's say, a Peterbilt truck. And I tell

Peterbilt that I want to buy a Cat engine in my truck, or

I want to buy a Cummins engine, or I want a Detroit, or a

Deutsch. I tell them what kind of engine, I tell them

what kind of transmission.

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What the manufacturer does is assembles those parts. Okay. And puts them together for J.H. Walker Trucking. And that's why I'm somewhat confused about what's going on here.

Now, what I do know is that there has been some alignment within the different manufacturers where

Peterbilt says, Okay, the engine of our choice is going to be a Cummins engine, or is going to be the Cat. Well, they were with Cat but Cat has kind of gone away from the heavy duty truck engines for trucks, except for Navistar.

So I'm confused at where your issue we're dealing with here --

MR. BRAY: Because --

MR. WALKER: The dealer that you get your truck through?

MR. BRAY: -- also sells [indiscernible] individually as in like -- I mean otherwise outside of warranty. Those engines, those transmissions and those axles that you ordered special in your truck, he sells replacement ones. And those entrants that Mr. Braziel was

talking about, there's a whole bunch that -- there's a whole another group out there today that is not among the [indiscernible] the world, they're not even necessarily truck related. Think of Holt Equipment, they're -- Ms. Cost has all of those people licensed for selling the Cat engine that can go in a Ford heavy duty truck. And that's kind of another issue and it doesn't really --

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MR. WALKER: Holt sells the engine -- they sell Caterpillar engines and they would try to tell me to put the Cat into my Kenworth and my Peterbilt truck. But where does the issue lie on this bill Because when Holt -- you know, Holt has big stores and then it has smaller satellite kind of stores, when Holt wants to put in a satellite store in Lufkin -- somewhere, pick the town of your choice --

MS. COST: It's when the application comes in to get the franchise license to sell not only the truck, but the engine, axle and transmission because they are separate lines that are put on a dealer's license because the Code makes them motor vehicles for purposes of warranty and protest rights and that sort of thing.

So when we're running our protest check to see does any other dealer within the county, or 15-mile radius, have Kenworth. No. Does any other dealer have Cummins engines. Yes, we've got three and they're all

right next door because it's a heavy truck row, and that's 1 2 where the issue comes in, that we're sending protest 3 letters for a part of the whole, and that part of the whole could end up holding up the whole. 4 5 MR. WALKER: So how do we want to fix it? MS. COST: I think we go back and --6 MR. BRAZIEL: Yes. 7 8 MR. WALKER: I understand what's going on. 9 MR. BRAZIEL: Yes. Again, I think it's -- I'm 10 sorry. Go on. 11 MR. VANDERGRIFF: No, I thought that comes back 12 to perhaps the -- I mean we can talk about it here, but 13 the two of you with maybe some input from Mr. Rush and 14 what you've heard from this Board can work that language 15 out. 16 MR. BRAZIEL: Okay. 17 MS. COST: Certainly. MR. VANDERGRIFF: The fifth out of sixth was 18 19 the Section 131 on advisory committees, and I'm not 20 sure -- I think we're all in agreement advisory committees 2.1 are necessary and it seems to me some of the question is 22 "may" versus "shall" and then some is the specific 23 language.

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said, Ms. Cost, is there anything you care to add?

But with respect to anything that Mr. Braziel

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1	MS. COST: That wasn't really my contribution
2	to this
3	MR. VANDERGRIFF: Okay. All right. Then the
4	last one was the duty on page 32, which was the duties
5	of the Executive Director.
6	MR. BRAZIEL: And I think, if I may, I just
7	used that as a talking point to get into the discussion
8	that I think you all are going to have in terms of
9	MR. VANDERGRIFF: Okay.
10	MR. BRAZIEL: what you think's
11	appropriate in terms of your delegation authority.
12	MR. VANDERGRIFF: That's what I but I wanted
13	to be sure.
14	MR. BRAZIEL: It was not an issue with the
15	language in Section 36.
16	MR. VANDERGRIFF: Okay. That's what I'd
17	assumed, but that we weren't going to discuss you
18	specifically on this, Mr. Serna.
19	(General laughter.)
20	MR. SERNA: You can. You can.
21	MR. VANDERGRIFF: All right. Okay. Any
22	further questions of Mr. Braziel at this point?
23	(No response.)
24	MR. VANDERGRIFF: Okay. I know you're not
25	leaving for the

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1	MR. BRAZIEL: So what we've done
2	MR. VANDERGRIFF: moment.
3	MR. BRAZIEL: we're going to have
4	MR. VANDERGRIFF: There are
5	MR. BRAZIEL: the parties involved sit down
6	with Mr. Rush and try to work this thing out
7	satisfactorily. Is that correct?
8	MR. VANDERGRIFF: Yes. There's about four
9	items of the six on here. The first four we discussed I
10	think there's some further discussion to kind of narrow
11	that. I think everybody understands the issues we're
12	looking at, and so I think with that, I think they can
13	narrow that I do believe there'll probably be another
14	person at the table because he had of the same issues I
15	think, and that's our next speaker, which is Ken Roche.
16	MR. BRAZIEL: Could I just make one
17	observation
18	MR. VANDERGRIFF: Oh, absolutely.
19	MR. BRAZIEL: before I
20	MR. VANDERGRIFF: And I was hoping you weren't
21	leaving.
22	(General laughter.)
23	MR. BRAZIEL: Oh, you want me to keep staying?
24	MR. VANDERGRIFF: No, no, just be close. Be
25	close, yes.

1 MR. BRAZIEL: I was just going to say that we also appreciate all the work that's gone into the Vision 2 3 21 bill. We are getting through that and, you know, I know that the Vice Chair will be responsive to any issues 4 5 that we have there, and just to let you know that we're 6 working on it. 7 MR. VANDERGRIFF: Okay. And so another way 8 it's 280-something pages. 9 MR. BRAZIEL: I think it's 343. 10 MR. VANDERGRIFF: 343. Excuse me, 343 now. 11 apologize. 12 The next speaker we had is Mr. Ken Roche. 13 MR. ROCHE: Good morning, Mr. Chairman. My 14 name is Ken Roche. I'm with Gulf States Toyota, a private 15 distributor, in Houston, Texas. I want to thank the Board 16 for the opportunity to visit with you. As the other 17 speakers have said, we too welcome the outreach by the Board and the staff for input. We appreciate that role 18 19 that you've given us. 20 In the context of trying to make this as quick 2.1 as possible, some of the comments that Mr. Braziel made, 22 we likewise have interest in those sections, and I'll work 23 with him and the staff to have our input put in together

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MR. VANDERGRIFF: As you probably noted a

so that we can have one discussion --

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second ago, I mentioned that you'd have input on those.

I'd like to add you into that little discussion group, and
we --

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MR. ROCHE: Because there's some implications even outside of the heavy duty trucks that the Alliance has identified as potential problems, and just we'll work through that with you all as well. Those aren't significant, but we want to highlight them to experience we've had in other states so that -- things like dealer-to-person has created some problems in some other states and we want to be able to provide that input so that can help clarify the issues so we get the right answer. So we appreciate the opportunity to participate in that.

The Alliance -- I'm not today representing the Alliance, but I'll once again mention that they submitted some written comments today, and if questions come up, I'm available to help you get through that. And they will also provide input as needed, but we'll work through those as well.

Some of those are duplicative of the same kind of sections. One particular one I'd like to mention is the issue with respect to no manufacturer distributors can own a franchise dealer or non-franchise dealer. That's particularly sensitive for GST. The way the statute currently reads, we have the ability to -- our owners, not

GST but our owners to participate as a dealer in the state, and we're a happy member of TADA in that role with West Side and North Side Lexus. So we'd like to be participating in that discussion as well, some implications.

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And there's also implications of new technology and the like that would be appropriate to explore in those discussions. So we look forward to that.

Probably the area that I had the most specific comment, the Board's heard me before on advisory committees. I would simply like to offer a suggestion in terms of an alternate for you all to consider. I've spoken to the -- Madame Vice Chair.

The idea, as the statute had it, that we'd have three advisory committees appointed for the three divisions of the four that were transferred from TxDOT.

We've come a long way, as obviously some adjustments in structure, organization that are being contemplated and implemented, and we understand the current statute as it is not very helpful and could provide some wasteful time and energy.

From a standpoint of the way the language is currently drafted where the Board may, we would like to at least suggest that we would recommend to you that two specific advisory committees be established. One, my

suggestion, GST's suggestion was one on technology which would cover the whole Vision 21 concept which I know you all have talked about, the committee has talked about, that kind of input from the customers and the partners in the industry.

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So if you did one on technology and the effectiveness of technology on the scope of the Agency, that would be able to then attack the Vision 21 in a productive ongoing structured discussion. So that's one.

The second, rather than a motor vehicle division, we recognize that there are going to be other operations affected and our suggestion is, is that you contemplate setting up a permanent advisory committee, an ongoing one, on operations and process efficiencies, or whatever other term you might want to get.

Our advocacy is that we would like to establish something that's structured to engage in a discussion at the day-to-day operational level as opposed to what you, as a Board, normally deal with in terms of policy.

As I've described, when we come up with something in those discussions, it's contemplated that as it becomes a substantive policy issue, it would be bumped back up to the Board for your domain, and that would be absolutely appropriate. So there's no notion of taking on things that really is the Board purview.

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But from an ongoing discussion, regular, about how processes are working, ow efficient they are, how can the staff help those that are their licensees to do something more efficiently, more quickly, time limits, and how we as customers can help the staff in terms of the completeness of data, et cetera. Certainly there's a dialogue both ways that could be productive.

To the extent that special issues are then identified by those kind of ongoing partnerships and discussions, the where you may establish committees on specific topics, that then fits right into the type of context that the committee has contemplated. So we offer that as a suggestion.

We'd like to offer that as an Agency, the
Board, its customers and licensees, and staff are all
interested in establishing an Agency that is customercentric. We think this is a good step, to have a dialogue
that's ongoing at the operational level, and we offer that
for your consideration.

In terms of any specific questions you may have on the written, I'd be glad to offer input. Some of these are the things that you've already identified, and we look forward to working with the staff and TADA, our partners, and talking this through.

MR. VANDERGRIFF: Any questions of Mr. Roche?

MR. WALKER: Yes, Ken, I know for the last year now that we've gotten to know each other. I know your concerns about the committee participation and so forth.

And I think you're absolutely right with the Agency can certainly benefit from outside input from people like yourself and other people out here within different parts of the industry. And, yes, we are going to have a technological in this Vision 21 committee, some people to work on it.

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But what we have done, I think only with the revision in this bill, was to get rid of the mandate of the three committees, and now it still gives us the ability to create committees outside of the scope of that, and still have participation from the outside. It just takes that mandate out of there.

And when you look at the Vision 21, let's just say that we mandated, the way you put it was technology committee. Well, once we get this technology done, that still is going to be out there that says we have to have a technology committee when, in fact, maybe we don't need one. So we're just trying to simplify it and make it a little more workable.

But I promise you that this Board -- and I'm a pretty -- I think I can speak for most of the people on this Board -- we do want input from people like yourself,

and we will form committees in order to take and to do wh at you want to do to progress your input into this Board and this Department.

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MR. ROCHE: Thank you for those comments.

That's helpful, but we've got that confidence in terms of where you all have talked about. As we described to our constituents who are headquartered out in Detroit and California, so you're going to go from mandatory to they'll do it when they want to it. That's not a shot at anybody, that's a discussion internally.

And so our suggestion of two topical ones that really would be central to an engagement, we hope that you might do that earlier than later and let us get started and that'll help everyone feel like we're going to start this venture together at that other level. I think we already are in terms of plenty substantive things and the like, so I'm not troubled, it's just suggestions.

MS. RYAN: My understanding too is that it's not necessarily -- the specifics could change, but the more permanent language that advisory committees will be established regardless of whether they're technology today or something else five years from now, maybe that permanence isn't in the document, however, the fact that there will be, regardless of what they are, is more permanent is what I'm understanding from the stakeholders.

MR. ROCHE: With that --

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MS. JOHNSON: And I'd offer a suggestion that might -- and, Mr. Roche, maybe this will help you -- the word "may" is what you're having problems with, so if we change the "may" to "shall" establish advisory committees, without being specific of what those functions are, would that give the manufacturers and so forth -- address the concern that whether this Board is receptive to you or not, future Boards may or may not be, and that will establish that you will have advisory committees.

MR. ROCHE: And what I -- that would help, and I don't think it limits the flexibility you intend to have, but at the same time I think it helps those of you that are going to be telling the legislature what you've done on the old, that you're not second guessing that. I mean it's a communication piece from me to my constituents, for all of us as constituents too. It's not a substantive problem. We know you're interested in doing it and we're just trying to help with words that convey the message.

MR. WALKER: Well, Michelle thinks it's right back to where we're at --

MR. ROCHE: With the exception of the specific naming of the committee.

MS. JOHNSON: Exactly. But we've heard from

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TADA and we've heard from the manufacturers that they want structure for the committees, and I'm not sure how to reword this in such a way as to provide that assurance to them. And it absolutely needs to be changed from what it is today, because this is a industry specific Board that the "may" is somewhat loosey-goosey with regard to we may, we may not.

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But if we shall, then we're going to have to look to -- and maybe it will be "shall" by rule, which allows input and an opportunity to provide that, and maybe it's the shall by rule which would then take us into the administrative section where we have an opportunity to actually then meet your needs specifically for all time.

MR. ROCHE: That would be helpful. I'm not here to say that I'm troubled that we're never going to see one. I'm not implying that at all. I'm giving you some suggestions to contemplate as alternative ways to approach it in your language substituting for the old statute.

MR. VANDERGRIFF: Any further questions of Mr. Roche?

MS. JOHNSON: I have one, and I don't know if I should have Myra come up, or you. On the back of you all's input from the Alliance, we have a proposed new Section 44 for the Texas Administrative Code, and this

isn't legislated so much as by rule. So is this -- would you like us to receive this and consider this at a future meeting --

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MR. ROCHE: Yes, please. Thank you for reminding me of that, because I wanted to tell you that that had been suggested because some of the language related to applications were being changed, and we thought that this might be an appropriate time for people to consider it.

we've not been able to get TADA that language yet, so really we will get with them, we'll explore whether that's something that's helpful in their mind as well, and if it is, then we'd jointly sit down with staff and explore whether that's a helpful addition for the processing. We think it shortcuts a couple of things that may be lengthy in nature in terms of getting applications filed.

MS. JOHNSON: And my request would be is that if the manufacturers would get with the dealer associations and work this out and maybe bring this back to the Board for a possible future role.

MR. ROCHE: That we commit to do. We've already talked this morning about giving them the language.

MS. JOHNSON: Oh, thanks.

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1 MR. ROCHE: Thank you. 2 MS. JOHNSON: That's all I have. Thank you. 3 MR. VANDERGRIFF: Okay. MS. RYAN: I have one clarifying question --4 5 MR. VANDERGRIFF: Sure. MS. RYAN: -- I'm sorry. Section 16 on the 6 lemon law, with the feedback that was sent from the 7 Alliance with regard to why we're changing what we're 8 changing, and then the concerns, so that's understood? 9 10 MR. ROCHE: Yes, the suggestion by the Alliance 11 relates to the broadening of the definition of those 12 individuals that can enforce a warranty for a new car. 13 those, I think, the idea was -- from staff was to get 14 those people that have moved in from other states and the 15 like. 16 The suggestion is, is that we may need to think 17 about the implication of some form shopping for people that are bringing cars in to the state simply because they 18 19 think they can get a better deal here, and we want to make 20 sure that we've thought that through with you all. Some 2.1 things, when you move and you permanently take residence, 22 that may be very different, but we want to make sure we 23 don't have a form shopping kind of problem. 24 MR. VANDERGRIFF: That's a little further

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discussion with the staff on that one.

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1 MR. ROCHE: Yes. 2 MR. VANDERGRIFF: Okay. 3 MR. ROCHE: So it's a flag to wave to say, Have you really thought about this aspect of it. 4 5 MS. JOHNSON: And I do believe that the intent of that, from my notes, is that we have military bases 6 7 here and that we have a lot of people that are coming in and they're losing time frame, they can't -- back to their 8 9 states, so we're trying to figure out a way to accommodate 10 their problems. 11 MR. ROCHE: And I don't think anyone's worried 12 about that, but we'd like to talk about the implication of 13 it. 14 MS. RYAN: And, Ken, I understand why we 15 changed it to what the concern was. 16 MR. BRAY: Yes, you keep looking at me, so I 17 feel like I need to respond to you. The form shopping that Mr. Roche refers to was really a significant problem 18 19 with the old lemon law. We actually had -- if memory 20 serves me, we actually had a Connecticut resident with a 2.1 Connecticut vehicle try to -- did take advantage of the 22 Texas law. 23 And we actually went to the dealer association 24 and said, This is a problem, and it was fixed.

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Unfortunately, it was restricted so tightly that the

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current law is only vehicles that are purchased from Texas licensed dealers can qualify for the Texas lemon law.

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And of course that cuts out the military folks that the Vice Chair mentioned, who are stationed in Ft. Hood but brought their car with them from wherever, it cuts out the Californians and the other folks that move to Texas with a relatively recent car that they register and title in Texas but can't take advantage of the lemon law.

So that's what is the intent of this. It is to -- it is -- I believe he said to expand, or broaden it -- it is to broaden it, but only to the extent of Texas residents with Texas registered vehicles and/or military personnel.

MR. ROCHE: And the Alliance's section is they'd like to talk that through in detail to make sure that everybody's comfortable that it's got the limitations to prevent people taking advantage inappropriately.

MR. BRAY: Yes, and I think that's appropriate. So we'll do that.

MR. ROCHE: Thank you.

MR. BRAY: Thank you.

MR. VANDERGRIFF: I believe that concludes -- I don't believe there's anybody else.

Is there anyone else from the industries that have discussed or would like to discuss any issues that

they've seen in these bills that has not been raised 1 2 already? 3 (No response.) MR. VANDERGRIFF: Okay. We did have -- I'm 4 5 just making sure the audience didn't have anything, then I was about to say we did have some items, additional items 6 7 for Board consideration that the Vice Chair was going to 8 go through. 9 MS. JOHNSON: Right. And then I have a couple 10 of other ones myself to discuss. 11 MR. VANDERGRIFF: Okay. 12 MS. JOHNSON: Okay. Let's start with what 13 everybody is in tune to, which is voting conflicts. And I 14 cannot --15 MR. VANDERGRIFF: Yes, we're still --MS. JOHNSON: We're still on the legislative --16 17 MR. VANDERGRIFF: This is the items for Board 18 members that you received. 19 MS. JOHNSON: This is the packet. 20 MALE VOICE: Oh. 2.1 MR. VANDERGRIFF: This is the one you received. 22 MR. WALKER: The one I copied and left on my 23 desk. 24 MS. JOHNSON: And it's even --2.5 MR. VANDERGRIFF: That I can't help you with.

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MS. JOHNSON: A former statute held that industry members could not vote in matters involving dealers and manufacturers, and we need to clarify. The enabling statute right now is silent as to whether Board members should vote if they have a conflict, although it's been a gentlemen's agreement basically that they do recuse themselves from the discussion or the vote.

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And I'm sorry, but I don't have the section noted here so that -- I don't know, Jennifer, you know these things off the top of your head on that. The voting --

FEMALE VOICE: It is not in the bill.

MS. JOHNSON: It's not in the bill right now, so we need to determine -- we need to take a position as a Board to determine this is something that needs to go in here with regard to voting conflicts. And the reference to the Transportation Code I would have. Let me get that.

MR. VANDERGRIFF: It's Transportation Code, Section, 1001.028.

MS. JOHNSON: And what this reads is a conflict of interest. A member of the Board shall disclose in writing to the Executive Director if the member has an interest in a matter before the Board, or has a substantial financial interest in an entity that has a direct interest in the matter. The member shall recuse

himself or herself from the Board's deliberations and actions on the matter in Subsection A, and may not participate in the Board's decision on the matter.

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A person has a substantial financial interest in an entity if the person is an employee, member, director, or officer of the entity or owns or controls, directly or indirectly, more than a 5 percent interest in the entity.

Do we need to change that?

MR. VANDERGRIFF: I wouldn't suggest changing that, per se, because that identifies really very clearly I think what's pretty common practice in any board or commission people serve on or in a elected capacity. But I think the issue historically in previous statutes that just governed the motor vehicle business, dealers and manufacturers recuse themselves automatically from voting. They could participate, however, in discussion and were called upon for thoughts, but did not -- as a matter of statutory construction did not participate in the votes.

We actually a former chairman of that esteemed body sitting two seats to my right. We have the Executive Director of that body, and they certainly are much more historically versed in that particular rule. But that's basically the gist of it, is that it just -- and that that is not the case currently, that any member has to recuse

themselves. All members, including the dealer and manufacturer representatives, are subject to the financial interest or direct interest that would cause them to recuse themselves regardless.

Mr. Ramsay.

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MR. GILLMAN: Well, I think that, if I understand the language, and if I have a financial interest, you know, if the manufacturers try to cancel one of my franchises, I can well understand why I would not get to vote. But if it's a matter of American Honda versus a Honda dealer in El Paso, and I just happen to be a Honda dealer, I think that the knowledge that I have would benefit the Board. And also, in fact, I should have a right to vote on that.

And conversely, Laura's sitting there works for Gulf States Toyota, and if -- I think we need her knowledge to understand what's going through the distributor's mind, and I think she should have a right to vote. Now if all of a sudden it's Gulf States Toyota itself, then she probably -- I think she shouldn't vote.

But if it's a Toyota or Nissan or some other distributor, Subaru, or whatever it is, that we should be able to participate. And I think it's a very important part, and I think that's what the dealers of Texas want and I believe that's what the citizens of Texas would

want, and I think that's what would be best for the industry.

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And, just to add on a personal note, I think that when I was chairman of this Board, I think that the dealers that served, and there was more dealers than there are now, there's just one now, historically we were probably a lot tougher on ourselves than the other Board members would have been because we recognized the violation so much quicker. So there's my statement.

MR. RODRIGUEZ: I have a question. Are we trying to change this?

MR. VANDERGRIFF: It's been suggested -- this is not in our bill, there's no language in our bill except for the traditional conflict.

MR. RODRIGUEZ: Conflict --

MR. VANDERGRIFF: Yes.

MR. RODRIGUEZ: -- definition. I agree with that. I think it works as it is, and I think we have not only honorable people here that would remove themselves if required, and we have counsel that could always tell us, you know, you probably should not do X, Y, or Z on this thing, Mr. Member A, B, or C, whatever it may be, and then so we have a couple of checks in the system.

MR. VANDERGRIFF: I think we're getting our answer.

MS. JOHNSON: Evidently. Okay. The second one is delegation, and there's -- whether we handle this as a global the Board may delegate any power that it holds or derives under this Act to one of the Board's members, the Executive Director, or any -- or one or more of the Department's employees. More specifically, we have two options here for delegation of powers, which also then

allows the Executive Director to delegate his powers.

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But the situation where it is that we're really focused is warranty performance cases, contested cases, and cure all. And I do believe there's also discussion in these bills the repeal of cure all, though I don't remember whether that got -- the last version of the bill I don't think that that was repealed.

So I'm not certain so the Board truly needs to decide whether we want to delegate your powers, have the global delegation to where we can retain that, or we may delegate it by rule, or whether you want to actually take a firm stand right now on delegation.

MR. VANDERGRIFF: If I could jump in just to make this point for the Board to remind us that the original bill that was written that was filed, House Bill 3097, our interim general counsel, if you recall, made a -- Linda Secord made a decision, based upon reading that bill, that this Board did not have the right to delegate

any of its powers period.

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The Board discussed that at some length whether we should or shouldn't, but it was moot based on what our Attorney General interim counsel said, we didn't have that power. And then with this Board's approval, I made a request of the Attorney General to give us an opinion about whether that was correct or not.

We have yet to hear from the Attorney General, although their 180-day period ran out, and so I did get a two-paragraph letter telling me that they were still considering it and that they just, by law, had to notify me that they hadn't done it within the 180 days, but they were still considering it and would get to it at some point.

At this point really the issue is whether we make any change in our existing statute or not. I think that my own personal suggestion is that we at least have the authority to delegate cases and that I'm most comfortable if we have a broad authority to delegate by rule where we'd have notice, comment, industry response, and we could, at a later date, maybe even not specifically put in our specific statute delegation of specific items.

But that would come back before the Board if we were given the power to delegate where we could then go through the items and decide this is something we want to

keep, this is something that we would delegate, and if we delegated it, who do we want that to be delegated to, it might differ depending on the circumstance. So I think that perhaps just having the broad power, the discretion to do it might be sufficient enough, and then it would come back, which would be some time next year, assuming we got that power, to decide how to delegate that.

MR. WALKER: Well, what -- okay, with such broad terms in the statement here, what you preclude from saying, Victor, I'm going to give you my proxy, I'm going home early today, to vote?

MR. RODRIGUEZ: Oh, no.

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MR. VANDERGRIFF: You know, you -- that's not -- this is delegation of powers specifically granted to us via statute.

MR. WALKER: We have the power to vote.

MR. VANDERGRIFF: Well, it's the Board as a whole, not an individual member. So that's a different question.

MR. GILLMAN: Well, right now we have all these -- if I'm going down the right track here, we have a lot of cases here that we say, do we accept what Molly Cost has done down there. We say, Yes. Or you can thumb through them, and I look at them before I get here, and there's one of them I specifically wanted to say something

about, say, Yes, except, are we going to retain that power?

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MR. VANDERGRIFF: Well, definitely right now we do, and we would always retain that. My suggestion is simply, if we address this at all, certainly the Board can decide not to address it, but if we address it is that it would just be that we have the ability to delegate, and then we would decide as a Board after notice, comment, and rule, what would be delegated, if anything.

So like for example, I certainly know from your perspective, I hope I'm not putting words in your mouth, you don't want to delegate the so-called contested cases under any circumstances.

MR. GILLMAN: Yes.

MR. VANDERGRIFF: But you might not want to hear --

MR. GILLMAN: Hear, got words.

MR. VANDERGRIFF: Right. To that -- but you might not want to hear at all times every single lemon law case, or some of the cases like that. So rather than try to pick and choose right now what we would delegate, what I'm suggesting is we just have the right to delegate and that that would come on an individual basis back up to this Board. But you wouldn't have to. You could keep all the powers if you wanted to.

MALE VOICE: If you have a vote.

MR. VANDERGRIFF: Yes.

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MR. GILLMAN: I think that -- I'm in total agreement with letting the staff, or whomever we want to do it, to do all the work. That's fine. I just want an oversight committee and that's what this Board needs to be. And I'd hate to see us have the right to delegate and we make a mistake and we delegate and say, Okay, you know, Brett Bray you're god itself, you name whatever it is, that's the way it is. I just think that'd be wrong. I think that this Board, and I think the Governor appointed us to represent the people.

MR. VANDERGRIFF: Just remember, if you have the right in the statute to delegate, that doesn't mean to do. So like all we would have in the statute is the ability to delegate, but that would still come before this Board to decide whether or not we wanted to delegate any part of our authority.

MR. GILLMAN: Why don't we stand on the vote and wait till we hear from the Attorney General.

MR. VANDERGRIFF: Well, we certainly can do that. That's an option. I mean I think that -- our lawyers tell us, including the Attorney General's Office in a different capacity, that we should clear this up one way or another statutorily. So I think that the strong

hint has been given to us is that we should clear it up one way the other, either just leave it silent or give ourselves the power to delegate.

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Most state agencies, correct me if I'm wrong, most state agencies have the ability to delegate certain powers and ours is confused.

MS. RYAN: I think something to remember too is I don't think, to your point, the delegation is of activity. The accountability always remains ours. So regardless of what we delegate or the outcome of that delegation, we're still responsible and we're still accountable to the Governor, to your point. So I think having the option doesn't get us off the hook for anything basically --

MR. GILLMAN: Well, I --

MS. RYAN: -- to your --

MR. GILLMAN: -- I agree with you --

MS. RYAN: Okay.

MR. GILLMAN: -- with a little exception. If we're going to be held responsible, and if we're going to be held accountable, then we ought to be making the decision. Now I don't mind recommendations, of if SOAH says one thing, we ought to have the right to look at it and say, We put our stamp on this and we believe this to be the right thing, as opposed to SOAH said this, and

that's the way it's going to be, and that's just the way 1 2 it is. I don't believe that's the intent of this Board. 3 MR. VANDERGRIFF: Well, remember, the ability to delegate certain items, it doesn't mean we have 4 5 delegated those items. It's just 6 MR. GILLMAN: Then why do you want to --7 MR. BRAY: Can I give you an example? MR. GILLMAN: Yes. 8 9 MR. BRAY: Today, you as a Board don't have the 10 flexibility that Ms. Cost has. She has the responsibility 11 currently for final orders in Transportation Code 503 12 If by some strange set of circumstances there was 13 a conflict, she had some conflict and shouldn't be hearing that case, she can delegate it to the Board. If it's a 14 15 terribly political matter, she's probably going to 16 delegate to the Board because she has the ability to do that. You don't have that flexibility. 17 MR. RODRIGUEZ: Mr. Chairman --18 19 MR. GILLMAN: We don't give it to -- back to 20 her? 2.1 MR. BRAY: That depends on what you want to do, 22 but you don't have the flexibility to do anything 23 presently and that's really all I think the Chair's 24 talking about.

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MR. VANDERGRIFF: Chief Rodriguez.

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MR. RODRIGUEZ: I'm sorry, I didn't mean to hit it.

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MR. VANDERGRIFF: That's all right -(General laughter.)

MR. RODRIGUEZ: I hit the microphone. And just one point I'd like to make, and there may be a question in that, and that is as we go forward with whatever we try to do in this regard, we should keep in mind that there could be fiscal impact. If we're trying to delegate this, say who's going to -- what body of people are going to do these particular hearings and what's the cost going to be if we don't have the staffing now, number one.

Number two, instead of so doing, instead of delegating, you know, I mean think this all goes back down to the central question, and that is whether or not we hear some cases or all of them or what we want to do in that regard. Why don't we set up a hearings process, a hearings process instead of -- instead of delegating broadly this way, why don't we set up some language that says how we're going to do hearings and who can appeal to the Board and who can't.

MR. VANDERGRIFF: We certainly can do that by rule, establish a hearings process.

MR. RODRIGUEZ: But the question is, can we right now, and that's not been answered yet, can we let

someone else hear things, and that's what we're trying to fix here.

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MR. VANDERGRIFF: That's correct.

MR. RODRIGUEZ: Right. So that's the --

MR. VANDERGRIFF: Yes. You bring up a good sub-point to this discussion.

MS. JOHNSON: And if I could -- let me see if this makes everybody happy. What we don't have here is by rule, so if we add that the Board may delegate by rule any power that it holds, then it comes before us to discuss it. We don't have the ability now, so this will give us the ability and by rule we have time to read it, discuss it, it gets posted, we have time for the industries to give us input and let us know.

And if we do delegate, we're going to have heard all the impact, it's going to be a three-month process versus the way that it is written without the "by rule," we could just have a meeting and somebody fails to show up, let's say TADA, we're getting ready to delegate contested cases and you're not here and it's an agenda item and you missed it, by rule we're going to protect -- we're going to give that three-month process for the input to be received, or 30 days, where the way it's written right now, it's a meeting thing in-house.

MR. RODRIGUEZ: But the question right now is

1	we don't I mean at least as we have been led to
2	believe, we don't have the ability to lawfully
3	MS. JOHNSON: Exactly. So if we add this
4	language
5	MR. RODRIGUEZ: pass this on to anybody,
6	so
7	MS. JOHNSON: if we add this language in
8	this bill, then we will at least have that ability, so it
9	clarifies where we are today, and then if we have
LO	MR. RODRIGUEZ: And all I'm saying I'm just
L1	different with the word delegation as it relates to this,
L2	I'm saying why get away from that and just say, Look,
L3	we want an alternative hearings process and this and
L 4	that's it. And then we set up by rule afterwards.
L5	MS. RYAN: Are the powers strictly limited
L 6	to I don't think we're limiting the delegation to just
L7	the hearings process.
L 8	MR. RODRIGUEZ: No, no, but
L 9	MS. RYAN: Okay.
20	MR. RODRIGUEZ: I think that's a central
21	genesis of this idea right here is to start doing
22	something in that area. It may
23	MS. RYAN: Okay.
24	MR. RODRIGUEZ: be used for other ones,
> 5	hut

MS. JOHNSON: But one of the things, and I agree with you, Ms. Ryan, that we don't have the authority to do that now, and an issue that I'm going to be bringing up in a minute is -- and it has not yet been decided on whether we have the authority to do -- to sign contracts or the Executive Director has authority to sign contracts, and if it is us, and we decide to delegate that, that's outside totally of what this discussion is here today.

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But we need that ability to pass on those authorities because it's like right now, we have to approve the forms the way that the law is written, and we're trying to change in this bill that we don't have to approve the forms, that the Department needs to take care of that. So we're addressing some of that, but we're going to miss something.

It's a lot of code and it's hard to handle it all, where if we gather the ability -- and again, I would like to see it by rule, then it opens the door, allows a process for input and then a final decision, no matter what the argument, whether it's hearings, contested cases, warranty performance, or contracts. So it would cover all of us, and if we have other issues that might -- I mean, you know, we've been talking about a semi-independent self-directed organization, we're going to need some ability to pass on some things.

MR. CAMPBELL: Mr. Chairman, if we get a ruling from the AG, if we get their opinion, does this become moot?

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MR. VANDERGRIFF: What I'm being told by the lawyers is that, no, that you should still clean this up, that it's not -- it's murky. That would certainly be helpful, but it still needs to be cleaned up.

MR. GILLMAN: If we get an opinion, is that the right word?

MR. VANDERGRIFF: Well, if an opinion comes in and it certainly comes in before the legislature deals with it, and that's still several months away, then this Board will be apprised and you could knock out any language that you having in the bill as it was not necessary. Until the bill's passed and made law, you can always change a section of it.

MR. WALKER: Are there really two issues here though? I mean Ramsay and Victor are talking about hearings and delegation of hearings, Cheryl's talking about delegation of authorities that the Board has with respect to signing contracts, with respect to -- I mean she's made it broad, where you all are looking at it narrowly. But by rule, I think, Victor, everybody has a right to appeal a SOAH hearing and take it to the Board. Is that not correct?

MR. VANDERGRIFF: Yes. But --

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MR. WALKER: And that's already there so they're always going to have that right under the current rules.

MR. GILLMAN: But if we delegate say -- we're not going to hear it, that Molly Cost is going to make all those calls. That's what -- we're talking about being -- having the ability to do it. Now whether we can do it or not, I don't know. But I'm not so sure I want the ability, because I don't want to circumvent --

MR. WALKER: It's a catch-22. You want to take service to the public and do what the function of this Board is, but by the same token we don't want to come up here six days a week and listen to hearings because we become over-burdened with them because there's so many and we can't hear --

MR. VANDERGRIFF: And remember, at the moment the -- our ability to delegate is limited in all circumstances, so almost all circumstances. So there are different nuances of things we might choose to delegate. You know, I mentioned earlier you might choose to delegate warranty performance and lemon law cases in terms of the final execution of those, and may choose in terms of contested cases not to do that. But not having the authority to --

85 1 MALE VOICE: Delegate. 2 MR. VANDERGRIFF: -- do it, just broaden --3 blanket prohibit on any of them seems to me a little 4 extreme. But I do think that Chief was going to interject 5 a point here. 6 MR. RODRIGUEZ: And I'm not saying 7 completely -- in the process of assigning those to someone 8 completely divest the Board from it, but then you could 9 choose what it wants to hear as a matter of an appeal to 10 the Board as opposed to having to hear all of them. But 11 right now we don't have the ability, we don't have the 12 ability to decide that question. 13 MR. GILLMAN: Well, that --14 MR. RODRIGUEZ: Yes. 15 MR. GILLMAN: -- I think that's a very good 16 point. Presently, if SOAH makes a decision, and we, the 17 Board, agrees with it, can we deny an appeal to this Board? 18 19 MR. BRAY: No, that's not correct. It's not an 20 appeal --2.1 MR. GILLMAN: It's a proposed final order.

decision, but that's a hard thing to say because you are so restricted in how you can change a proposed finding.

But basically all cases heard by SOAH for this Agency come

MR. BRAY: They kind of -- they'll make a

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before some decision maker currently. It's not an appeal right that you -- nobody elects --

MR. GILLMAN: Let me restate the question, and this is a question. If SOAH makes a recommendation, and we totally agree with the recommendation, this Board agrees to it, we've read the proceedings, what we agree with SOAH, then do we have to grant -- do we have to sit here and listen to the whole thing over again if we don't choose to?

MR. BRAY: You do not.

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MR. GILLMAN: Well, so why do want to delegate that away? I mean all we got to do is look at these orders and say we like it. You know, we think that Molly's right, or we think that the Enforcement Division is right, or we think the counsel's right --

MALE VOICE: Mr. Chair --

MR. GILLMAN: -- so okay.

MR. VANDERGRIFF: Mr. Campbell.

MR. CAMPBELL: But I think it's not that we have to delegate it, that we choose to delegate it. I mean we can either choose to listen to it, or choose not to. With this new verbiage it gives us the authority to delegate if we want to, if we want to hear it, we can hear it. And I think that's what -- we need the latitude to be able to do that. Is that correct?

MR. VANDERGRIFF: Right. And from a personal 1 2 position -- perspective, I would not be willing to 3 delegate any of our authority unless I thought it would 4 be -- all the parties would be best served by delegating 5 some authority. And so for example in the area that I know is most near and dear to your heart, I'm not yet 6 7 convinced that any other avenue is better than what we 8 If I was convinced of that, then I'd certainly lean 9 that way. But I'm not convinced that way. 10 But what I'm talking about is it's not efficient for this Board to not have the right that 11 12 virtually every other board in Texas does, which is the

ability to delegate some of its authority if it chooses to do so.

MR. WALKER: Well, what happens if the next chairman --

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MALE VOICE: Or the next board.

MR. WALKER: -- the next chairman doesn't have your same passion? And all of a sudden you just moot -cut out all the rights of the citizens.

MR. VANDERGRIFF: Well, the Board would -- the Chairman could not on his or her own decide to delegate some authority. That would have to be the Board's decision to delegate that authority.

MR. BRAY: And may I add one thing to that?

Member Johnson -- it was never -- it was like it was discussed -- it was never contemplated. Now, I'm all for the Board having the most flexibility possible. But in terms of the administrative cases, if you never contemplated that wouldn't be by the rule.

MR. VANDERGRIFF: Yes.

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MR. BRAY: Which means that a new, a whole new Board comes into being, they're going to have to deal through the rulemaking process, what you have done, to undo.

MR. VANDERGRIFF: I guess really simply it boils down to a question for this Board, Ramsay, and for the rest of the Board members, is literally do we want to have the ability to do that, if we choose to do that, or not. I mean that's really what it boils down to.

MR. RODRIGUEZ: To do what --

MR. VANDERGRIFF: The ability to delegate, or to establish a hearings process, or I mean if we chose to do that.

MR. RODRIGUEZ: I have -- go ahead. I'm sorry.

MR. VANDERGRIFF: Go ahead.

MR. RODRIGUEZ: I think that's -- the problem point is this suggested language that we have the ability to delegate anything we do. I think that's where the problem is and I don't -- not necessarily --

1 MR. VANDERGRIFF: And that's really not the 2 The intent is just to -- and you've kind of hit intent. 3 it, the subsection of the hearings process. 4 MR. RODRIGUEZ: And so I think if you narrow 5 that down in terms of -- if you just narrow that down, I 6 think we'll be okay, and then the Board --7 MALE VOICE: That's not what Cheryl's talking about. 8 9 MR. RODRIGUEZ: Yes, I know that and --10 MALE VOICE: That's a separate --11 MS. JOHNSON: There's two choices. There's two 12 choices here, global and partial, and that's the way that 13 this is presented on the first page. The global is the 14 Board has the ability, "may" delegate; I'd like to add "by 15 rule" to be more specific. Or partial delegation would be 16 the more specific that you're talking about under 17 2301.154. MR. VANDERGRIFF: Yes, but that's giving 18 19 specific cases, and what I'd prefer at the moment is that 20 that partial delegation is maybe we're just -- we're going 2.1 to -- we would be looking at the hearings process and 22 decide at a later date which pieces of it we wanted to 23 delegate, if we wanted to delegate all -- any of it.

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final draft here on this because we were unclear and we

MS. JOHNSON: You can see why we didn't have a

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90 1 felt like the Board needs to take a position. And I would 2 encourage you to give yourself the ability because if the 3 AG opinion -- it does not become law necessarily just 4 because the AG rules, you know, and I think that their 5 preference is actually that we go out and we clarify this on whatever our intent is. So let's say --6 7 MR. VANDERGRIFF: They just give an opinion, and that --8 9 MS. JOHNSON: Right. 10

MR. VANDERGRIFF: -- opinion could be ignored.

MR. RODRIGUEZ: Mr. Chairman --

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MS. JOHNSON: We can fall back on it, or we cannot, we can use it to our advantage or not.

MR. VANDERGRIFF: Mr. Rodriguez.

MR. RODRIGUEZ: If the idea is to address the hearings issue then we ought to craft language that allows us to do so as opposed to the broader. I don't agree with the fact that we may not have the ability to sign contracts and I think that's -- if you read the law carefully, I think it's within there. So we -- that scales it down to this particular area we're trying to address, and we're trying to create some language in the law that allows to do something, if we choose to do something.

MR. VANDERGRIFF: That's correct.

MR. RODRIGUEZ: And I think if that's the 1 2 objective, then I think that's the way you ought to craft 3 this language. 4 MR. VANDERGRIFF: Okay. But then Mr. Ramsay --5 Mr. Gillman, you -- the issue he has is whether we even 6 want to have that ability. 7 MR. GILLMAN: I don't mind the contract part. 8 MR. VANDERGRIFF: No, no, his was on --9 MS. RYAN: I think one thing for us to think 10 about too maybe, we get, if I understand this correctly, 11 one shot at this for the next two years. We have a lot --12 we're a new agency, we have a lot of things that we are --13 we're breaking new ground in a lot of areas, there may be 14 things that we are completely unaware of that we will deal

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I mean I look at this as having a power of attorney that I stick in a safe deposit box, with no intention of ever using it, but I have it if it's needed. And I think that's what we're going after here, if I'm correct, that we don't know what we're heading into in some areas and it gives us the flexibility to deal with it.

with in the next 12 to 18 months that right now, without

this flexibility, we won't be able to deal with them.

MR. GILLMAN: Can I ask -- I have a question. MR. VANDERGRIFF: Please.

1 MR. GILLMAN: What Vice Chair is proposing about changing it to the word "rule" --2 3 MS. JOHNSON: By rule. By rule. MR. GILLMAN: -- "by rule," and you said it 4 5 was always your intent to do it that way? Did I hear you 6 correctly? 7 MR. BRAY: You did as to the contested cases. What I said up front was, I would like the Board to have 8 9 all the flexibility possible, and in terms of the 10 contested cases, and I thought that's what she referenced 11 at the time, that those would have to be done by rule. 12 And while I've got --MR. GILLMAN: Well, if we got that language in 13 14 15

there, it would make me feel a little better. It makes a whole lot of difference.

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MR. BRAY: I think we could. I think we can figure out how to craft that. But let me add, and I'm sure you'll get a little more comfortable with it. It doesn't have to be really an all or nothing proposition, even in terms of a specific type of contested case. I've had conversation with the Chairman before that I think it's pretty evident that you want to retain some of --

And what you can do, you can split it up, you can have -- by rule, if you had the flexibility, you could have a structure where somebody else hears the cases;

somebody else --

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And that's a final decision. And if the Board wanted to, you could. I'm not sure it's going to satisfy some folks but you could retain say kind of a hybrid motion for rehearing process where you don't have to hear arguments or any of that, you could read briefs of the parties about why the person on the staff that had the decision making ability got it right or wrong. There are ways to cut this up.

MR. RODRIGUEZ: But you first need the lawful authority to do so.

MR. BRAY: Yes, sir.

MR. RODRIGUEZ: Right. And that's what I'm saying here is --

MR. BRAY: Right.

MR. RODRIGUEZ: -- let's carve out the ability to lawfully do this, and then we can decide exactly by rule how you want -- how we want to do this. You know, A and B goes here and never to Z, and C and D cases go over here and whatever. And we can always figure that out by rule. And then if it doesn't work, if it's a rule, we can always change it thereafter. But not having the ability to necessarily create that is what's inhibiting us right now.

And all I'm suggesting is let's carve out --

instead of going with this broad delegation, let's carve out some language that says, you know, we have the ability, or we may create a hearings process. That frees this Board to do so as it chooses thereafter, if it wants to. I mean I think we're all saying the same thing. I think --

MR. VANDERGRIFF: We are definitely.

Mr. Campbell.

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MR. CAMPBELL: I do have an issue. You know, if we technically -- without the AG's opinion, if we don't have the authority to delegate our obligations or even to delegate the authority to enter into contracts, yet we're doing it, you know, are we in violation. So I think that we definitely need to move forward to at least correct our authority to do that. Without the AG's opinion we need to go ahead and try to get it cleared up to where we can make those delegations period.

MS. JOHNSON: I'm going to dare to make a motion, because I'm not sure we're going to reach the end of this unless we just take a vote, and my motion's going to be that we have a global delegation approach and that the Board have the language crafted that the Board may delegate by rule any power that it holds under this Act with the rest of the language, but add the "by rule" so that we at least have the ability to contemplate in the

future what we do not clearly have the right to do now. 1 2 MR. RODRIGUEZ: You're asking that we --3 MS. JOHNSON: A motion to a global delegation 4 by rule, that we have the language under -- and this sheet 5 on the first item, it's global delegation where the Board may delegate by rule any power that it holds or derives 6 7 under this Act, not limiting it to hearings, but to open the door for those things that we have not yet 8 9 contemplated. It doesn't mean we have to, it means that 10 we may. 11 MR. RODRIGUEZ: You're asking that we agree to 12 propose legislative language that allows us to delegate 13 anything we want to by rule, or are you asking that we 14 adopt -- or that we move forward with a rule? I'm not real clear. 15 16 MS. JOHNSON: That we have the language that the Board may delegate by rule. 17 MR. VANDERGRIFF: It's the former --18 19 MR. RODRIGUEZ: That we add --20 MS. JOHNSON: The global delegation, which is 2.1 the first --22 MR. RODRIGUEZ: That we add language --23 MALE VOICE: When you indicated --24 MR. VANDERGRIFF: It was the former, you're --25 MALE VOICE: It's by bill.

MR. VANDERGRIFF: Mr. Campbell.

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MR. CAMPBELL: When you're delegating any authority, that would indicate that you could delegate your authority to vote, and I just think it's pretty evident you can't do that. So can you use that terminology "any authority"? I don't think that would be correct.

MS. JOHNSON: Under this chapter? The Board may delegate any power, but that's -- but does that cover -- maybe the Code, under it's jurisdiction?

MALE VOICE: Well, he's got the language there.

MR. BRAY: We could craft the language, but you can't delegate what you can't delegate. He cannot delegate his vote. You can delegate your -- the authorities that are enumerated in Transportation Code --

MR. VANDERGRIFF: Under the Act, yes.

MR. BRAY: -- and Occupations Code.

MR. VANDERGRIFF: That's what -- I think the question is, that's been put before the Board, if I can be so bold as to say, that you're requesting the ability from a broad perspective, not the limited perspective of the hearings process, but the broad perspective that the Board could, by rule, delegate any of its power that it has.

MS. JOHNSON: Right. And my justification is, as Ms. Ryan said, we don't know yet -- we know what we've

bumped into in the last year, we don't know what we're going to bump into and who knows what the legislature is going to do in this next session. If we lose this ability to have this broad ability, not that we're going to do it, we don't have to take any action after this is in Code, and it might be our Board takes no action and another Board might take action.

But to have the broad delegation to be able to have the ability by -- to, by rule, which does, again, extend it out, give the public an opportunity to comment, and us plenty of time to really think about whether this is what we want to do. And it's not that we're going to give anything away. This is a pretty strong Board and I can't imagine that we're going to give up much of anything that we don't have to. But we need the ability by rule, I believe, to address issues.

MR. VANDERGRIFF: Okay. So just kind of putting it to -- we're asking the Board -- the motion is for a broad -- the ability for a broad delegation of the power by rule. And I would ask if there is anyone who wishes to second that, and then any discussion on it.

(No response.)

MS. JOHNSON: So no global delegation.

MR. VANDERGRIFF: All right.

MS. JOHNSON: Okay.

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MR. VANDERGRIFF: So the discussion is still back on the table maybe about the specific with respect to the hearings process.

MR. RODRIGUEZ: Mr. Chairman, I'd like to just simply defer to you on this and, you know, I think you've got idea here that we're willing to carve out some language. We're willing to carve out some language or -- really what we're saying is we'd like to see -- we would support some language in the bill that allowed us the ability to have an alternative hearings process by rule or otherwise and --

MR. VANDERGRIFF: All or part. And I see, obviously, with strong reservations by Mr. Gillman, I'm sensing -- I don't know if there's a motion for us to vote on yet, it's something that we need to continue to send back to work on, but I'm seeing a majority of the members who are --

MR. GILLMAN: Well, you didn't get a second.

MR. VANDERGRIFF: We didn't -- we're not voting -- I'm not sure there's a motion to vote on because we don't have any specific language to vote on, but I'm happy to -- I'm not making that motion. If we want this by motion, then I would like somebody to make a motion with respect to --

MR. GILLMAN: There is a motion on the table.

1	MR. VANDERGRIFF: A motion, I asked for a
2	second, nobody said anything.
3	FEMALE VOICE: Oh, no, she said
4	MR. VANDERGRIFF: The motion died
5	FEMALE VOICE: she let it die.
6	MR. VANDERGRIFF: as a lack of second. I'm
7	sorry. I thought I noted that earlier, it died as a lack
8	of second.
9	MR. GILLMAN: Well, can we go back to the
10	drawing board on this one a little bit, because I
11	understand where you're coming from.
12	MR. VANDERGRIFF: Yes, I
13	MR. GILLMAN: I just want to really, really,
14	really preserve what I think the Governor put me here for,
15	and the next guy.
16	MR. VANDERGRIFF: Well, I think that the
17	suggestion has been that we go back and craft language a
18	little more honed in on that with respect to that and
19	bring it back to this Board. So you'll
20	MR. GILLMAN: And get some of the, maybe some
21	of the stakeholders once again
22	MR. VANDERGRIFF: Well, I have no doubt they'll
23	be talking to us about it, but, you know, we can go back
24	on that and do that.
25	MR. GILLMAN: And I have on a little

different subject, I've talked to some of the stakeholders 1 2 and they are really appreciative the way this Board has 3 done this thing, specifically the Vice Chairman. And I applaud the Chairman and the Vice Chairman on that. 4 5 you very much, and hopefully we can do that on this too. MR. VANDERGRIFF: Well, that's certainly the 6 7 intent. So is that -- the Board okay with that? We're 8 moving forward hopefully with the entire bill, but this 9 particular section we'll come back with some further 10 discussion on, but I do sense a general support --11 MALE VOICE: And this is for the clean up bill. 12 Correct? 13 MR. VANDERGRIFF: Yes. And I do sense general support for addressing this issue, so. 14 15 MS. JOHNSON: And so then it takes us -- oh, 16 I'm sorry. No, I just -- the clarification is 17 MS. RYAN: that by voting, I think what we -- the delegation is good 18 19 with the clarification. So the clarification needs to 20 come back prior to a vote, or if we voted, would it be just to get the language cleaned up? We don't need to 2.1 22 vote on that. Right? 23 MR. VANDERGRIFF: I am going to ask you --24 MS. RYAN: Are you looking for more --25 MR. VANDERGRIFF: -- to look to approve on

1	these two bills, moving them forward so that we can move
2	them out to legislative counsel. But we'll still have
3	time between now and the December meeting we can always
4	insert this language in the bill, whatever we come up
5	with.
6	MS. RYAN: I think we agree that it's important
7	to have some delegation feature in the bill. That's what
8	I'm asking.
9	MR. VANDERGRIFF: I'm okay, if you would like
10	to make a motion to that effect, that we have to hone in
11	on the language, but that we put it in this bill, I'm okay
12	with entertaining that motion, if
13	MS. RYAN: And that's the clarification I'm
14	looking for, that I wanted to be clear on before
15	MR. VANDERGRIFF: Okay. Well, I
16	MS. RYAN: So I think what we need to make a
17	motion on, and I may not get this right, is that we vote
18	that a form of delegation powers be added to this bill,
19	even though we need to get the wording clarified.
20	MR. RODRIGUEZ: I'll second that.
21	MS. RYAN: Okay.
22	MR. VANDERGRIFF: Okay. So we do have a motion
23	and a second. Do we have any further discussion on
24	that

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MS. JOHNSON: Could we hear that motion again?

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MR. GILLMAN: That's what Cheryl's motion was. 1 2 MS. JOHNSON: I needed to clarify it. I don't 3 think it's any different, but I needed to --4 MR. VANDERGRIFF: No, no, this is -- yours 5 is just --6 MALE VOICE: It's not global. 7 MR. RODRIGUEZ: This is not as global, this is 8 narrower. 9 MS. JOHNSON: This is partial. 10 MS. RYAN: The motion is that we as a Board --11 MR. GILLMAN: Hers was global, yours is --12 MR. RODRIGUEZ: Narrower. MS. RYAN: I don't know what it is yet, but we 13 need -- what we need is --14 MR. GILLMAN: You don't know what it is --15 16 MS. RYAN: -- delegation authority in this -delegation authority needs to be in this bill. We need to 17 18 clarify the language and agree on it as a Board. 19 MR. VANDERGRIFF: But are you specifically 20 referring to the hearings process in the sense that it's 2.1 lots of things in the hearings process versus -- we just 22 had a motion that failed for a lack of a second on a 23 global delegation, so you're -- if I'm correct, you're 24 talking specifically in the -- it's a big box, but it's a

box that includes the hearings in the --

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MS. RYAN: It's more global. I just needed to 1 2 see -- I just need to see the language, and that's what 3 I'm trying to clarify, so. 4 MR. VANDERGRIFF: Okay. 5 MR. GILLMAN: Didn't we say we were going to 6 try and hash this out, talk about it some more and then --7 MS. RYAN: But the hashing out -- what I'm --MR. RODRIGUEZ: Mr. Chairman --8 9 MS. RYAN: -- trying to get --10 MR. RODRIGUEZ: -- I'll withdraw my second. 11 Let's just keep it at what it was before and -- because we could --12 13 MS. RYAN: What I'm trying to clarify is that we get it cleaned up before this bill goes. And if it 14 15 needs the global language --16 MR. VANDERGRIFF: I'm going to suggest that we 17 continue to move these bills forward. We have to get those bills through legislative counsel, filed, ready 18 19 to -- or prepared and ready to file. Then we can always 20 insert this provision in there if the Board chooses to do 2.1 so. But I don't want -- I would strongly urge the Board 22 not to hold up these bills for a month because a month 23 could be death. 24 MS. RYAN: Then can I ask that the first motion

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be called back up to be voted on?

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1	MR. VANDERGRIFF: You're going to second that
2	motion?
3	MS. RYAN: Yes.
4	MR. CAMPBELL: Well
5	MR. VANDERGRIFF: Mr. Campbell.
6	MR. CAMPBELL: Well, I guess if you take the
7	motion, can we discuss it, will you open it up for
8	discussion?
9	MR. VANDERGRIFF: Yes.
10	MR. CAMPBELL: So we've got a motion
11	MR. VANDERGRIFF: And maybe now a second, if
12	you're motion's back on the
13	MS. RYAN: Yes.
14	MR. VANDERGRIFF: floor, now a second.
15	Okay. We're on the
16	MR. BRAY: You either need to vote on it, or
17	you need get him to withdraw his second so she can
18	MR. VANDERGRIFF: He already did.
19	MR. RODRIGUEZ: It's already withdrawn
20	MR. VANDERGRIFF: His withdrew his second.
21	MR. BRAY: She withdraws her motion, she
22	makes
23	MR. VANDERGRIFF: Right. And so is your
24	motion your motion's back on the that's what I'm
25	I'm jumping ahead so they don't have to state it, and I

1 apologize, but you're motion's back on the floor, Ms. 2 Johnson. 3 MS. JOHNSON: Okay. I move that language be prepared that will allow global delegation by the Board by 4 5 rule, and that be prepared and brought back for the next 6 Board meeting. 7 MS. RYAN: I second that motion. 8 MALE VOICE: Any discussion? 9 MR. VANDERGRIFF: Yes. 10 MALE VOICE: When we --11 MR. VANDERGRIFF: Yes, we had a motion by Vice 12 Chair Johnson and a second by --MALE VOICE: Restate the motion, please. 13 14 MR. VANDERGRIFF: -- Ms. Ryan. 15 MS. JOHNSON: That language be crafted, and 16 actually we kind of sort of already have it, but that language be crafted that allows global delegation by rule 17 by the Board. 18 19 MR. VANDERGRIFF: What I would encourage at 20 this point is that, and we're in the discussion part, 2.1 she's just restating it, or clarifying it, is that you 22 not -- you focus more on the issue, which is allowing us 23 to globally delegate powers versus the specific language, 24 because I think everybody is in agreement that this isn't 2.5 the final language, that we'd have to have that

discussion.

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MR. CAMPBELL: Well, and then the -- while we're in discussion, when we're talking -- when you put the verbiage -- when you say global, I think that opens it up so wide. I think if you just say that we're -- you know, I agree with Laura, we're trying to get it to where we can put this in the whole package. But the wording's not right and I don't know if you put global in there that that makes it right either. I think you have discuss it.

As we were going to, we're going to present it, say we're going to do this, but we want to get the verbiage right, so if you leave out the word global we might could move forward with it.

 $$\operatorname{MR.}$$ VANDERGRIFF: Well, but we do have a motion and a second where two members have said they want to vote on --

MR. CAMPBELL: Global.

MR. VANDERGRIFF: Yes.

MS. JOHNSON: And the difference, Mr. Campbell, is, at least from my perspective and I've obviously got to support the motion, is we don't know yet what other things we might bump into. And I mean we've already discussed contracts, and again, it's a permissive language, that's not yet specified in law, that we may, but then we may not.

1	MR. CAMPBELL: Well, but that's why I say you
2	shouldn't maybe you shouldn't leave it so broad as
3	global. I think you made, during the discussion, as
4	you're moving forward with this thing, if you say global,
5	that encompasses basically everything and if you
6	MS. JOHNSON: Isn't global just the title used
7	on this paper? The wording is actually see isn't that
8	correct? No?
9	MR. GILLMAN: She's proposing changing the
10	wording.
11	MR. VANDERGRIFF: No, no, she's
12	MR. WALKER: Oh, no, no, because
13	MR. GILLMAN: She's saying by rule.
14	MR. WALKER: She saying that we her proposal
15	is to send this back to whoever to rewrite this is what
16	her proposal was.
17	MR. VANDERGRIFF: But it's still
18	MR. WALKER: She's wanting to adopt this.
19	MS. JOHNSON: It's still global.
20	MR. CAMPBELL: But the intent is still the
21	motion is still global in that it encompasses more than
22	just the hearings process.
23	MS. RYAN: The wording states any power not
24	global I mean it's

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MS. JOHNSON: Any power and global.

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1 MALE VOICE: So global is just a term. 2 MS. JOHNSON: Makes sense? Right. 3 MR. RODRIGUEZ: So we're going to go back to 4 the legislature and ask them to let us pass on the 5 authorities that they gave us to do, it says, Now please, Mr. Legislator, let us say who else might do it. 6 7 MALE VOICE: Yes. MR. RODRIGUEZ: That doesn't sound right. 8 9 MS. JOHNSON: But by rule we're going to be 10 writing Administrative Code. MR. RODRIGUEZ: And that's a problem when 11 12 you're trying to say delegate any authority that the Board 13 has to -- I mean that's terrifically broad. And I --14 MS. JOHNSON: Can we ask general counsel. This is going to fall under Occupations Code, the Board 15 16 authority. Correct? 17 MR. RODRIGUEZ: Mr. Chairman, I thought I was 18 speaking here. 19 MS. JOHNSON: Oh, I'm so sorry. 20 MR. RODRIGUEZ: I'm sorry. If we want to 2.1 address some of these things and we -- I'm for crafting 22 some language that allows us to do what we want to do. I 23 think that's what we want to do. I'm not against -- but I 24 think it's got to be narrower and a little bit more 2.5 specific and as opposed to this broad you may delegate

anything that we want to, to somebody else. I don't think that will pass muster, I don't think the legislature is going to buy that. But that's just an opinion.

I think we all here would like to have the ability to have some things passed on and done with our guidance. I think that's the point. I think we agree on that. Now the challenge is reduce that to some language that we all agree with, that's all. And I'm saying if we agree on that, then let somebody work on the language and bring it back and then we can work from that.

MR. VANDERGRIFF: My suggestion would be, if someone wants to call the question, to vote on this particular motion, and then if that motion passes, so be it, if it does not pass, then perhaps the alternative motion be along the lines that Chief Rodriguez suggested.

Mr. Ramsay.

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MR. GILLMAN: You had a motion and you had a second, so --

MR. VANDERGRIFF: Yes.

MR. GILLMAN: -- we should have a vote. But, question. What is so wrong with letting these stakeholders and us have a little more discussion about this to where we can possibly craft some language like Chief is saying over there, because I think we're all on basically the --

110 1 MR. VANDERGRIFF: Right. 2 MR. GILLMAN: -- same page here. I just want 3 to really preserve what I feel this Board's intended to 4 do --5 MR. VANDERGRIFF: Yes. MR. GILLMAN: -- for the future. 6 7 MR. VANDERGRIFF: The issue is not that issue, 8 per se, with all due respect on that, it's that -- the 9 motion on the floor is that this Board would have -- and 10 we're using this term global, but it's really a very broad 11 delegation authority and by rule, and that would encompass 12 more than the issues we've been talking about. 13 MR. GILLMAN: So redo the language, and the new 14 language would be what she just moved. MR. VANDERGRIFF: Well, I think that -- correct 15 16 me if I'm wrong, Vice Chair, it's your motion, but we 17 would still be looking to perhaps fine tune that language, it's just the thought process of a more global delegation 18 19 ability versus a more narrowly structured delegation. 20 MR. GILLMAN: I just think we might ought to get that language structured and let us look at it before 2.1

MR. VANDERGRIFF: That's what I think the next motion is going to say. But hers is the same in the sense that we would be -- we'd hone in on the language a little

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we go to the government.

1 I think your issue is, are you comfortable having in 2 our statute that we can delegate any power that's been given to us. And --3 4 MR. GILLMAN: No. MR. VANDERGRIFF: Okay. Well, that's the 5 6 question, and then -- as I understand it, and then if 7 there's a rephrasing of that question in some other more 8 narrow delegation, that's the --9 MR. GILLMAN: And I'm understanding the Chief 10 right, he's saying, Fine, let's -- there's a lot of things 11 we can delegate, we ought to separate out some that we 12 can't delegate. Is that somewhat your language? MR. RODRIGUEZ: I think we're all agreeing to 13 14 look at something that we're willing to do and pass on, 15 but I think the question in front of us right now is, what 16 I think is most of us say will no, we don't want to do 17 that, so, and that is --18 MALE VOICE: It's the global part. 19 MR. VANDERGRIFF: So I'm just suggesting if 20 someone would like to call the question --21 MR. RODRIGUEZ: Right. 22 MR. VANDERGRIFF: -- to vote on this --23 MS. JOHNSON: I will call for the question. 24 MR. VANDERGRIFF: Okay. Thank you very much.

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The question's been called, and do we need to

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restate this motion so everybody understands the global 1 2 delegation power? 3 (No response.) 4 MR. VANDERGRIFF: Okay. I quess not. So all 5 those in favor of that motion, please raise your right hand. 6 7 (A show of hands.) 8 MR. VANDERGRIFF: All those opposed? 9 (A show of hands.) 10 MR. VANDERGRIFF: Okay. The motion is 11 defeated, five to two. For the record --12 MALE VOICE: For the record, can we have that 13 the fors were Member Johnson and Member Ryan --14 MR. VANDERGRIFF: The two -- yes, yes. And all 15 the others opposed, that would be Members Walker, Gillman, 16 Vandergriff, Campbell, and Rodriguez. I do want to note, 17 I failed to note this earlier and I apologize for that, but Board Member Rush is also not been in attendance all 18 19 day, along with Board Member Campbell. So we have two 20 members --21 MR. CAMPBELL: Campbell's here. 22 MR. VANDERGRIFF: Excuse me, excuse me, excuse 23 me, I apologize. 24 MR. CAMPBELL: Unfairly vote. Unfairly vote. 25 (General laughter.)

1	MR. VANDERGRIFF: Yes, yes. Board Member
2	Butler and Board Member Rush are absent and have been all
3	day.
4	Okay. Now that motion for global delegation
5	has been defeated. Is there further discussion or
6	further another motion you'd like to be before us?
7	MS. JOHNSON: I would move that staff bring
8	back a variety of delegation language that will give the
9	Board the opportunity to determine what authority it wants
10	to delegate.
11	MR. BRAY: Can we put a time limit on it
12	MS. JOHNSON: In time for the next meeting.
13	MR. BRAY: It has to be.
14	MR. VANDERGRIFF: Yes.
15	MR. GILLMAN: I must say, because I know you're
16	worried about that.
17	MR. BRAY: You can still put the bill out there
18	and amend the bill.
19	MR. VANDERGRIFF: Right.
20	MS. JOHNSON: And this is if
21	MR. BRAY: You can always amend the bill.
22	MS. JOHNSON: a motion and, Mr.
23	Chairman, if a motion is necessary, because there is a lot
24	of things that were discussed here today already by our
25	stakeholders that we have already referred it back to

staff. We have the manufacturers and the car dealers
associations getting together with staff to look at
things, so maybe it isn't so much a motion that's needed
as that we need the staff to come back with some

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MR. VANDERGRIFF: And we do have, as we've noted already, there's several issues that they'll be doing that with. However, this is one area where we've devoted a considerable amount of time to, and I think it would probably be appropriate to gauge the member support for having this discussion continue further.

additional language and clarify, to tell us what will --

MR. RODRIGUEZ: No. I think we ought to cut off. I think there's enough guidance here to staff and otherwise that they can work with and bring us back --

MR. VANDERGRIFF: I'm fine with that.

MR. RODRIGUEZ: -- I mean we're willing to look at --

MR. VANDERGRIFF: As I said, I'm fine with that. So we will bring it back, but we are bringing it back in the sense that we are going to consider, and I think there's -- there seems to be support for having the ability for a partial delegation, or a more narrow delegation relative to the hearings process is what I'm hearing. So I want to make sure that that's the direction we're giving. The potential --

1	MR. BRAY: Okay. That's not what I heard
2	but
3	MR. VANDERGRIFF: Okay. That's what I wanted
4	to be sure of.
5	MR. BRAY: I thought I understood Member
6	Johnson to say directing the staff to bring back a variety
7	of alternatives and that
8	MR. VANDERGRIFF: But they're narrowed into
9	this process of these cases.
10	MR. BRAY: On cases.
11	MR. VANDERGRIFF: Yes, that's what it's
12	narrowed into.
13	MR. BRAY: I missed that part.
14	MR. VANDERGRIFF: Okay.
15	MS. JOHNSON: I will withdraw that motion. I
16	never had a second anyway. But I think that staff clearly
17	understands something needs to come back for the next
18	meeting, unless we need a motion.
19	MR. VANDERGRIFF: Great.
20	MS. JOHNSON: Great. And wait, I haven't even
21	touched the controversial items. You all ready for
22	controversial items now?
23	MR. GILLMAN: Oh, my gosh, we get some
24	controversial
25	MS. JOHNSON: Yes, here's the if I may

continue, this will pretty much wrap up my input. 1 a couple of items, I'm going to slowly take you through 2 3 them. 4 MR. BRAY: Could I interrupt for a moment? 5 (Pause.) MS. JOHNSON: And this is on some of the 6 unresolved items --7 8 MR. BRAY: Sorry. 9 MS. JOHNSON: Sir? 10 MR. BRAY: If I could interrupt for one moment, 11 and take you back one issue previous because I remained 12 silent on it, it's the interest and financial interest, and you all said -- I believe I understood that the Board 13 decided the language was fine, leave it alone. 14 15 And just so you -- just so I weigh in on this, the issue for the staff is not the financial interest 16 17 part, that part is pretty explanatory. The issue is the word "interest." Interest is really not defined in law 18 19 for this purpose, and leaves open a variety of potential 20 attacks. Mr. Gillman said that if a Honda dealer in 21 22 Honda in El Paso had an issue, he felt like he ought to be 23 able to hear the matter and vote on the matter. He might 24 feel that way, the loser in that El Paso case might not.

And the word "interest" is just a gimme for an appeal

point.

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MR. VANDERGRIFF: So what is your suggestion, given the Board's direction that they didn't want anybody to be precluded from voting?

MR. BRAY: And I'm sorry to belabor this, I just wanted to point out to you what -- because I don't think we brought the issue before you properly and I just want to point out that the financial interest part is not a problem, it's the interest part that's a problem.

MR. VANDERGRIFF: But I think the Board understood that and decided they did not want to limit anyone.

MR. GILLMAN: I'm happy to clean that up to where we can do what we want to do and lessen the problems.

MR. BRAY: Well, it's not necessarily the best idea, and I'm not sure I like it for good government reasons, but I would probably take out interest because it is a built-in hurdle, or a problem, or land mine for people because it's not clear what it means to anyone, it -- well, it means something different to everyone.

MR. GILLMAN: Do you think if we remove the word "interest" then we could still participate in the vote and it would --

MR. BRAY: That's more financial reasons.

1 MR. GILLMAN: No, no, that's not a problem. 2 MR. CAMPBELL: Mr. Chairman, and we're back 3 talking to the voting conflicts measure. But that's already in statute and it's run by all boards right now; 4 5 they all operate under the same statute pretty much -- or is that not correct? 6 7 MR. BRAY: The words "interest" and "financial interest" is specific to the motor vehicle board --8 9 MR. VANDERGRIFF: So is your suggestion just to 10 eliminate the interest provision at this point? 11 MR. BRAY: That's for now, that's not --12 MR. VANDERGRIFF: Okay. 13 -- you know, might as well come out MR. BRAY: 14 of legislative process --15 MR. VANDERGRIFF: Okay. MR. GILLMAN: Do we need a motion on this? 16 17 MR. VANDERGRIFF: I think we're okay to get that. 18 19 Okay. Vice Chair? 20 MS. JOHNSON: And I'll try and do this quickly, 2.1 unless it becomes another hot issue. The first one, and 22 I'm going to start at the beginning and work in order. If 23 you take the smaller bill, which is in the front of your 24 book, on page 28 we have the authority contract, the way

that this is written -- I'll let you all get there, it's

in the middle of the page -- the Department may enter into 1 an interlocal contract with one or more local governments 2 3 in accordance with Chapter 791, the Government Code. The Department by rule shall adopt policies and procedures 4 5 consistent with applicable state procurement practices and so forth and so on. 6 7 One of my issues is, number one, does the Board 8 want to legislatively give all authority to contract; and 9 then, number two, if we are, then do we want the 10 Department by rule or the Board by rule to adopt policies 11 and procedures for that? 12 MR. VANDERGRIFF: Is there -- Mr. Bray, any staff clarification on any -- on this? 13 14 MR. BRAY: Actually, with your indulgence, I wouldn't mind if we could bring in Ms. Soldano and --15 16 MR. VANDERGRIFF: Sure. MR. BRAY: -- even Mr. Arnett, both of whom 17 are contract experts. 18 19 MR. VANDERGRIFF: Yes, I'm looking for you to 20 tell me who's the one that needs to come up and talk. 21 MR. BRAY: I'm thinking these two will help us 22 both. 23 MR. VANDERGRIFF: Okay. I just want to note 24 that Member Gillman left the room at approximately 11:30. 2.5 And depending on -- can I ask this question,

Ms. Johnson, how many issues do you have numerically? 1 MS. JOHNSON: Just a -- I think it's like 2 3 three. MR. VANDERGRIFF: Okay. Then I was --4 5 MS. JOHNSON: It's just in multiple sections of 6 different bills, so I have to --7 MR. VANDERGRIFF: That's great. I intended to take a break after this was over. 8 9 MALE VOICE: Ms. Rodriguez also left too. 10 MR. VANDERGRIFF: All right. Mr. Rodriguez has 11 also left the room as well at approximately 11:25. 12 MS. JOHNSON: Okay. So the Board needs to give 13 direction on this because the way it's written we're giving the authority to contract, at least to interlocal 14 contracts with other local governments here. And so we 15 16 need to address is that limited to contracts just with regard to interlocal governments, or all contract ability, 17 and then should it be the Department or should it be that 18 19 the Board establishes rules, because the Department might 20 adopt policies, but not rule. MS. SOLDANO: For the record my name is 2.1 22 Jennifer Soldano, and I'm with the general counsel's 23 office. I'm still not quite sure what my title is yet, 24 we're in flux right now.

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This is actually a statute, frankly, that I

stole from TxDOT. We had this passed several years ago, because Chapter 791 is a very complicated chapter. In order to contract with a local government, actually a state agency has to contract with two of them.

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So one of the things is that we had this problem with TxDOT, that don't want to have with the DMV, was that we wanted to do some kind of work with San Antonio Water Authority. Well, you had -- I had to call up another San Antonio authority to get them to join in the contract so that we could be under 791.

So it just got very complicated because you had to have three parties for everything. So the intent of this is just if we need to do something with a local government, we can just do it directly and not involve another local government.

And the B was put in when this went to the legislature with TxDOT, is they wanted to -- the legislature or one of them wanted to make sure that we weren't trying to sidestep any procurement laws. And we weren't. It was really more of just a cooperation statute. And so that's really what B is, is to make sure that we just go with the regular procurement laws.

As far as Department by rule, many of the statutes say it doesn't really matter legally whether it's Department or Board, although just so you know, I've

already started the next version of this, and I did a word search and replaced all the "Departments by rule" "by Board by rule," because the Department actually doesn't make rules itself, it has to go through the Board. So that will be changed. I did a word search on that one.

MR. VANDERGRIFF: So is this statute only dealing with -- this section is only dealing with interlocal contracts and the language is already being changed to "the Board by rule," not just --

MS. SOLDANO: Yes.

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MR. VANDERGRIFF: -- Department. Okay.

MR. WALKER: Where would we enter into an interlocal contract with government, other than TxDOT?

MS. SOLDANO: Well, we have some specific laws already with what we call the scoff laws with the cities and the counties that specifically let us interact with one entity, and we have contracts that way. But with --

MR. WALKER: Give me an example because I don't understand what you're talking about.

MS. SOLDANO: Oh, I'm sorry. Okay. So for example let's say a county is owed money by someone. Well, the county can request us to not register that vehicle because the county needs to recoup its money from that person first. And we have some specific laws that allow that to happen.

1 But there might come a time with a county or 2 with a city that we want to do some kind of cooperative 3 project that isn't specifically enumerated in the 4 statutes, and this would allow us to do it without going 5 through Government Code 791. And again, the prominent Government Code 791 is that you need two local entities. 6 7 MR. WALKER: When you say local --8 MS. SOLDANO: Local I mean municipality or a 9 county. 10 11 MALE VOICE: Yes, that's why when you mentioned 12 TXDOT. That's an interagency contract versus what she's 13 talking about. 14 MR. WALKER: So in other words --MS. SOLDANO: There's no problem with one 15 16 agency and one agency, two agencies together. That's --MR. WALKER: Well, and I did read it, I didn't 17 like this in here last night about for example if the city 18 19 of Houston has red light cameras, and the city of Houston 20 wants to say, Hey, don't give Johnny Walker a license plate renewal until he pays us the \$50 for running a red 2.1 22 light, you're saying, as of right now, we couldn't enter a 23 contract with the city of Houston unless we also had a

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MS. SOLDANO: Actually, we have specific law

city of Sugar Land also agreeing to the same contract?

1 already for red light cameras that has us going directly 2 to Houston. But if there was some other reason, and 3 mostly I was thinking as far as technology expansion, that there might be some kind of project we want to do with 4 5 just one county, a pilot project with one city to try it out, and it's just avoiding that third party if we want to 6 7 do something. It's not that we can't now -- we can now. 8 It's just we might have to get two local governments to 9 make it clean under the Government Code. 10 MR. WALKER: And would TxDOT be --MS. SOLDANO: Yes. Well -- and we were putting 11 12 it and we decided it was very helpful with TxDOT, especially for any kind of pilot projects. 13 14 MR. WALKER: But Cheryl's interpretation, I believe, earlier was that she made some statements that 15 16 TxDOT is the only agency that has the ability to have their Executive Director enter into contracts. Does that 17 cover this too, or is that --18 19 MS. SOLDANO: And that's all contracts. Right. 20 That is not really specifically this. 21 MS. JOHNSON: Okay. 22 MS. SOLDANO: This is --23 MR. WALKER: So that has nothing to do with 24 this.

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MS. SOLDANO: With this.

MR. VANDERGRIFF: The questions that I heard

were that this related only to interlocal, and the answer

is yes, and then there already -- there's been a change

made that this would be by rule before the Board versus

the Department. So I think personally that the Board's

well covered on this one. It's very narrow and the Board

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would see it.

MS. JOHNSON: The next one, if everybody's -- MR. WALKER: I'm fine.

MS. JOHNSON: -- good with that, then the next one is right below that on educational campaigns and training, and I do understand that this is permissive language, that the Department may conduct public service education campaigns related to its functions.

I think what I'm struggling with right now is this is a horrible time for us to be going to the legislature and say, Give us permission to spend a million dollars on commercials so that we can tell people to renew their sticker, which they have to do by law anyway. And do we want this there? Do we want -- this is permissive, we may, we may not, but we need to decide whether we want to leave this in here. And this is also on page 328 on the VTR bill, which is the larger bill on the end.

I don't believe this is a good time for this, but the worse that would happen is legislatively, if they

do not agree, is that they would strike it.

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MR. VANDERGRIFF: I don't know if the staff has any thought process here that they want to make sure and explain.

MR. BRAY: Well, it's another -- it's just another tool, another area of flexibility, and it's, as she points out, it's a Board decision whether you want to seek this flexibility or not.

MR. VANDERGRIFF: But first --

MR. BRAY: But I would say we believe it's consistent with the Chair's and the Board's philosophy about the Department being like a business, forward thinking, progressive, all those things to have the tool. Now whether or not you use it, that's another issue.

MR. VANDERGRIFF: Yes, me personally, I think we ought to have the tool, and it is a may and the Board would approve anything. So I don't think it warrants cutting it off from possibility.

MS. JOHNSON: And again, I'm bringing these issues up at least to point -- bring attention to them and make sure you understand everything that's in this bill, so --

MR. VANDERGRIFF: Would the Vice Chair -- like maybe if we add in there that it would be brought to the Board, you know, for approval.

1	MS. JOHNSON: That would give me more comfort,
2	yes.
3	MR. VANDERGRIFF: Okay. Why don't we do that.
4	MS. JOHNSON: So we will add language to bring
5	this let me make a note of that.
6	MS. RYAN: It's a business-minded approach too.
7	We don't necessarily have to spend a million dollars every
8	time we want to do a campaign or a program too. It just
9	could be awareness too, so I think it gives us the
10	ability
11	MR. VANDERGRIFF: So you want to add "with
12	approval of the Board" at the end of the sentence?
13	MS. JOHNSON: Yes.
14	MR. VANDERGRIFF: I'll add that.
15	MS. JOHNSON: And I guess Jennifer had that.
16	Okay. And then that also will be on page 328 in the VTR
17	bill, Ms. Soldano.
18	And then the next one and this one is
19	actually in your list and it's on page 18, and I had
20	thought that this was removed and then I stumbled on it
21	this morning, so I'm glad that I found it again.
22	MR. WALKER: Page 18?
23	MS. JOHNSON: Page 18 in the small bill.
24	Personal identification information for obtaining a title.
25	The Department may require an application for title to

provide current personal identification as determined by

Departmental rule. Now I believe that this might have

previously said Texas driver's license and they changed it

to personal identification.

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My initial concern was I'm a big privacy person and when it was Texas driver's license I was very uncomfortable, and as the person who's dealing with a customer every single day, when it was social security numbers we were horribly burdened by our customers, that they were really offended. That got changed, and then I don't know whether personal identification might be appropriate, and that might have to be established by rule. Maybe I could show my voter registration card if I'm titling a vehicle.

If everybody's satisfied, that it's okay with this, my only secondary question is, if we're going to be collecting personal identification information, is, and I'm not sure if I ever got an answer, how are we going to secure that information.

MR. VANDERGRIFF: Sure.

MS. JOHNSON: And I heard from all the industries that they were concerned about this.

MR. WALKER: I can't find this on page 18.

MS. JOHNSON: Page 18 on the small bill.

FEMALE VOICE: No, excuse me --

1	MS. JOHNSON: Oh, I'm sorry, wait a minute.
2	No, it isn't. I'm sorry. It's on the big bill, yes.
3	I've got too many sections here. Thank you.
4	It's revising Section 501.0235, we're actually
5	adding it.
6	MR. WALKER: Hold on, let me get there.
7	MS. JOHNSON: Okay.
8	MR. WALKER: Okay. Now what
9	MS. JOHNSON: It think that's where.
10	MR. WALKER: Let's go to where we were now so I
11	can
12	MS. JOHNSON: Personal identification
13	information for obtaining a title.
14	MR. BRAY: May I suggest that we switch Lee
15	Burnett with Mr. Elliston?
16	MR. VANDERGRIFF: Sure.
17	MS. SOLDANO: If I may tell you the reasoning
18	behind this is one of the reasons is we want to, of
19	course, prevent fraud in our titling. We changed it from
20	driver's license to having it decided by rule because
21	then, again, we would have the public comment, the public
22	input, we'd have the two-, three-month process for this.
23	Social security number was taken out last
24	session and, frankly, the reason the social security went

into the law years ago was for child support reasons. But

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the Attorney General's computers and our computers never talked, so it really was kind of a moot point for collecting social security numbers.

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We do, in the future may be able to talk to other agencies, specifically maybe DPS, and do some kind of correlation with numbers. When we go electronic, we're going to need some kind of common factor, and Mr. Elliston can explain this more, but there's going to have to be something in our system that we can match up for example with DPS so they have easier access.

MR. ELLISTON: Just for the record my name is Randy Elliston, and I am the Director of the Vehicle Titles and Registration Division. In regards to collecting personal information, or having them show personal identification to obtain a title is very important to prevent persons obtaining fraudulent documents.

The type of what you use for that identification is also important in that so that they have some means of being able to link up with some type of law enforcement, which typically uses a Texas driver's license, or social security numbers, those types of things to be able to identify people. However, when they come in to get a title, we want them to show us something of who they are so that we know that the person who is obtaining

1 the title is the person who should be obtaining the title at that point in time. 2 3 Yes, sir? 4 MR. GILLMAN: I go a lot of places, and they 5 say government-issued ID required. Would that solve the 6 problem? MR. VANDERGRIFF: Go ahead. 7 MR. GILLMAN: We're not --8 9 MS. SOLDANO: And that's why we would set it by 10 rule. The Board would decide what constituted a 11 government issued identification. MR. ELLISTON: Mr. Gillman, there's a lot of 12 13 controversy about what type of identification people use 14 and what is acceptable. And so by doing it by rule, we 15 give people an opportunity to tell us what they would like 16 to see us to use, or not like to see us use, those types of things. We think that it would be appropriate to do 17 18 that. 19 There are forms of identification out there 20 2.1

that people want to use that aren't as secure as we would like them to be, and we believe it's, you know, our public duty to make sure that we provide the most protection to the people who own vehicles that people aren't obtaining fraudulent documents on their behalf.

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MS. SOLDANO: May I address the security issue?

There's another chapter in the Transportation Code called Chapter 730, and it's the Driver's Protection Privacy Act, and it pertains to any agency that retains motor vehicle information and there are specific things that are not allowed to be released, except under, you know, a listing of circumstances, if you're the owner or the lien holder, you've got this exception.

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And right now we have millions of pieces of data that fall under that personal information, and we keep very tight control under Randy's folks of that information. So this would be another piece of information. And, for example, there's also Attorney General's opinions under the Open Records Act for things like social security numbers and driver's license, okay. Those are not — that information is not releaseable under those opinions.

MR. BRAY: And [indiscernible] Open Records
Request, you have a bunch of papers, you've got to do a
bunch of white out and that, but in electronic form these
are the programs of what is allowable to be distributed.

MS. SOLDANO: Absolutely. And the way they can set the computers up is that, you know, when they print a screen with certain -- that it can -- that information cannot print, if you need to print it, then that's automatic.

MR. ELLISTON: And we think that you're going 2 to hear a rule later in the meeting regarding the Driver 3 Protection Act and -- Privacy Protection Act, and we think 4 it's very important for you as a Board to have the ability to say what type of identification you think is acceptable 6 for people to use. 7 MS. JOHNSON: And I always go back to we had people voting last week, and all they had to show was a 8 9 tax bill or a utility bill with their name and address on 10 it, and that was proper identification to vote. So 11 there's a whole slew -- if you look at the Election Code, 12 you'll fine a whole lot of acceptable ID that right now is 13 okay for voting. I would think that would also be okay 14 for DMV, that that would be a good resource as you develop 15 that. 16

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MR. ELLISTON: That would be a Board decision at that point.

MR. VANDERGRIFF: Mr. Rodriguez.

MR. RODRIGUEZ: I have a question for Ms. Johnson.

If somebody grabbed a two year old child and the only lead we had was a vehicle license plate, would you not want us --

MS. JOHNSON: We have the ability right now to give that to law enforcement.

MR. RODRIGUEZ: Well, I'm just -- let me 1 2 finish. Would you not want us to have the most reliable 3 information about that vehicle and its owner? MS. JOHNSON: I have no problem with the Agency 4 5 having -- or law enforcement having information. MR. RODRIGUEZ: That's just -- and that's --6 7 MS. JOHNSON: I have no problem with law enforcement, but people walk into my office right now and 8 9 can ask for information that we're not prohibited from 10 giving. 11 MR. RODRIGUEZ: What you're trying to do here 12 is make sure that the person registering the vehicle is 13 the person that's presenting himself there. 14 MS. JOHNSON: And I absolutely --15 MR. RODRIGUEZ: And it's very, very, very 16 important to have that person be -- I mean you match that 17 person up with that ID, you know, nothing prohibits me from going in there. If I do something else, and say, You 18 19 know what, I'm John Smith, I want this title, and so be 20 it. You know, I would like to take this further and that 2.1 is, you know, I know that a lot of people register 22 vehicles to P.O. Boxes, and that's a problem. 23 When we're looking for that two-year-old child 24 that got, grabbed and run away and all I have is a P.O.

Box number and that Post Office box is closed in the

1 middle of the night. So it's a problem, you know. 2 we'd like to be able to do is get them to -- if people 3 want to get their registration documents in the mail at their P.O. Box, that's fine, that'll be their primary 4 5 address, but through this ID process, to definitively have and require them to have a physical mailing address 6 somewhere that can be discerned from the identification 7 8 we're trying to get here. 9 MR. GILLMAN: You can't have a P.O. Box on a 10 driver's license now, can you? FEMALE VOICE: You can have a --11 12 MR. RODRIGUEZ: I'm not really sure about that. MR. GILLMAN: You're supposed to know those 13 things. 14 MR. RODRIGUEZ: I don't issue licenses, but we 15 16 may later. But --MR. WALKER: What --17 MR. RODRIGUEZ: I'm sorry. Go ahead. 18 19 MR. WALKER: What are you going to do about 20 corporations? I buy lots of trucks and I don't go down 2.1 there and show them my driver's license to buy trucks. 22 can make a phone call and they deliver those trucks and 23 titles to my office. 24 MR. ELLISTON: There's a provision for that.

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MALE VOICE: It's contemplated and they're

going to be presenting that.

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MALE VOICE: And you have an identification number for business anyway.

MR. VANDERGRIFF: Yes, Mr. Campbell.

MR. CAMPBELL: What makes this different than the social security that we used to collect and provide to transfer title if you're going to request say a driver's license or what other information or other social security, because we did it at one time, they stopped doing it because of the I guess consumer side of it, what's going to be the difference here?

MR. VANDERGRIFF: You want to address that?

MS. SOLDANO: Well, for one thing, if it were driver's license then we could more readily connect to law enforcement. The social security, the reason it was in there really became moot, that particular number, for what they were collecting. You know, again, we would keep it secure.

I can tell you that at any given time we have 3- to 400 title cases, because they cross my desk, of people suing each other over titles. And a lot of that is because there's fraud because right now you can walk in and get a title and not have to present any identification.

MR. RODRIGUEZ: The requirement to present, I

137 think, is what we're talking about here. That doesn't 1 2 necessarily mean we have to retain that information. But 3 the requirement to present that information so that you're properly documenting a person to that -- you're titling 4 5 that person to a vehicle with the right address and right name and all that. It doesn't necessarily oblige us to 6 7 keep that information or reflect it on any of the registration documents at all if we don't want to. That's 8 9 a different --10 MS. SOLDANO: You're absolutely right. Policy 11 decision which could just be at the county level or in the 12 regional office, they look at it and it doesn't 13 necessarily have to go into the computer. Going into the

computer connects it up to other things, but as far as the initial issuance, we could just be looking at it.

MS. RYAN: What this, as I understand it, what this wording says is that at a later date we'll be making some definitive decisions on what, how, and what it looks like later. Correct? All this does is give us the option to make those decisions?

MS. SOLDANO: Exactly. And you can make the decision not to require anything.

MR. ELLISTON: It's another one of those you're giving yourself an option.

Yes, sir.

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MR. CAMPBELL: On the whether it's a driver's license or what other form it is for a dealer to transfer their title or transfer, what are they going to have to provide? Would they provide just the identification number, or the driver's license number, or do they need a photo ID, or what are they going to be required to —because they do a number of them at one time.

MS. SOLDANO: Right. And again, we haven't -you haven't established that by rule, but what you could
do is you could say the dealer comes and they have a copy
of the driver's license of the new owner, and so the
person, you know, doing the data intake can see that this
is for that person.

MS. RYAN: There's also usually a form that the customer signs that gives them authorization to do those types of things and they sign that as part -- if they're transferring title it's usually part of the process.

MS. SOLDANO: Exactly. The power of attorney.

MR. ELLISTON: And it would also require the runner or the person doing this to show identification so you also document who it is that's running these documents at that time, or making the transfers.

MS. JOHNSON: With that said, I want to thank you all for answering these questions. That was everything that I had. Everything else has already been

covered. And I want to thank everybody for the input, it was really, really necessary, as we were out talking -- as Mr. Elliston and I were out talking to the stakeholders and receiving input that we really needed the Board's input and I greatly appreciate you taking the time to dedicate to this.

MR. VANDERGRIFF: I want to echo the sentiments others have mentioned today that the Vice Chair has, I think, done a tremendous job. A lot of hours, a lot of time, a lot of effort pushing this forward, and I certainly want to note that multiple members of the staff, I think most of which are sitting in the audience as well a lot back up in the Camp Hubbard complex and the Riverside complex as well, that worked on it.

But I certainly have to particularly note

Jennifer Soldano, who put a lot of effort into this, and

Deborah Giles, who put a lot of effort in with the

individual stakeholder groups, and our own esteemed

general counsel, Mr. Bray, and Mr. Serna, who refereed a

lot of disputes internally as he's skillful at doing so.

I appreciate everybody's efforts. I know I've missed

some, but it gave specific direction on this, but do know

that I thank you for that.

I think it's also commendable, certainly different from the associations' and the industries'

perspective to have participated up front, but I believe 1 2 they've echoed their appreciation for getting that 3 opportunity, and as a result we hope we can move both of these bills forward from this Board to the next level. 4 5 There are some clean up things to be done, but I'm expecting those two -- and those will come back to this 6 7 Board, but I'm expecting these two bills to move forward. I failed to note this earlier, that team 8 9 members, certainly in executive leadership and committee 10 chairmen that this would come before, as well as some 11 members, are aware of these bills, and have been looking 12 at them as well. So we are prepared to move forward.

MALE VOICE: You need a motion.

with that, I'd submit the matter to the Board on these two

bills and that I'd be looking for your approval to move

MR. VANDERGRIFF: Yes.

these two bills forward.

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MR. GILLMAN: So move.

(Second inaudible.)

MR. VANDERGRIFF: Yes, we have a motion by Mr. Gillman and a second by Mr. Walker. Any further discussion?

(No response.)

MR. VANDERGRIFF: All right. A yes vote, please vote by raising your right hand.

(A show of hands.)

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MR. VANDERGRIFF: The motion carries unanimously with members Rush and Butler absent today.

Thank you very much. I would now suggest, it's about 10 till 12:00, that maybe we go into a 25 minute recess for a break and for some lunch. And then the estimation based on the schedule I have is that -- Board members and the public, that the items that we do have are about an hour and a half in length after that, so we should be able to knock these out by 2:30 -- excuse me, by two o'clock at the latest. So with that we are in recess till 12:15.

(Whereupon, a recess was taken.)

MR. VANDERGRIFF: I want the record to reflect -- I'm just going ahead and talking so we're moving -- I'd like the record to reflect that all members are in attendance. I'm not sure if I need to take roll again or not, I don't believe I do, but --

(Pause.)

MR. VANDERGRIFF: -- we have Johnny Walker,
Ramsay Gillman, Vice Chair Cheryl Johnson, Victor
Rodriguez, Jim Campbell, Laura Ryan and the Chair, Victor
Vandergriff are all here in attendance, along with the
senior staff. Members Marvin Rush and Cliff Butler are
absent from today's proceedings.

And we are -- and I apologize, the reason I'm fumbling -- there it is -- I was looking for my agenda. We are now moving to page 6 on our agenda, and we are taking up Item 3A, which is the adoption of rules under Title 43, Texas Administrative Code, Chapter 217, and we have Randy Elliston up to present.

MR. ELLISTON: Good afternoon, Mr. Chairman and members. For the record my name is Randy Elliston. I'm the Director of the Vehicle Titles and Registration Division.

Before you are amendments for consideration of final adoption which relates to Chapter 217 concerning motor vehicle registration. An amendment to 217.22 creates permanent trailer plates, which allow a trailer to retain the same plate for seven years without being issued a new plate or registration sticker. The Department received one comment on this amendment from the Texas Motor Transportation Association. TMTA, which represents approximately 900 motor carriers, stated that it is in full support of this amendment.

Another amendment is -- to this section, allows the Department to send renewal notices by electronic mail if the customer chooses that option.

And then amendments to 217.40 delay the increase in fees for the one-year T plates and generic

The generic plates are the white plates with the 1 2 small Texas book emblem at the top of the plate. 3 increase in fees was approved by this Board on July 10, 4 2010, but was delayed due to computer implementation time 5 tables. The amendments also grandfather existing 6 7 specialty license plate fees for the non-profit 8 organizations plates, including personalization. As long 9 as an existing customer timely renews, the price of the 10 plate will not be increased to the new vendor plate price. 11 The amendments also clarify that the transfer 12 of patterns that have been purchased at auction may be by 13 gift, inheritance, or sale. Such a transfer does not need 14 to be through another auction. And I recommend the 15 amendments for adoption. 16 MALE VOICE: Motion to approve. MR. CAMPBELL: So move -- second. 17 MR. GILLMAN: Second. 18 19 MR. VANDERGRIFF: Motion and a second. The 20 motion for approval by Member Campbell, second by Member Gillman. Do we have any discussion? 2.1 22 (No response.) 23 MR. VANDERGRIFF: Seeing none, I'd call --

(A show of hands.)

raise your right hands in support of the motion.

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MR. VANDERGRIFF: The motion carries 1 2 unanimously by those members present. 3 We're now under 3B on Chapter 207, public 4 information. I'm sorry, 215, I apologize. It's A2, 217, 5 motor vehicle distribution by Bill Harbeson. MR. HARBESON: Yes, Mr. Chairman and Board 6 7 members, in the Texas Register on September 10, this rule 8 was published after the Board had approved presenting it 9 to the -- for publication. The rule itself was part of 10 the original advertising rules that was inadvertently deleted when the rules were reenacted last year. So this 11 12 rule had been in existence for some time, and again, it 13 was just inadvertently omitted when the rules were 14 reenacted. It deals exclusively with the term "auction" 15 16 and how it's used in advertising. What the rule says is that if you use those terms "auction" or "auctions," that 17 there actually is an auction that's going to be conducted 18 after the advertising. We offer this rule for your 19 20 adoption. 2.1 MR. RODRIGUEZ: So move, Mr. Chairman. MR. VANDERGRIFF: We have a motion for -- have 22 23 we got a second? 24 (Second inaudible.) 2.5 MR. VANDERGRIFF: We have a motion by Board

Member Rodriquez and a second by Board Member Walker. 1 Any 2 discussion? 3 (No response.) MR. VANDERGRIFF: Seeing none, offer your right 4 5 hand in support of the motion. (A show of hands.) 6 7 MR. VANDERGRIFF: The motion carries unanimously. Members Rush and Butler are absent. 8 9 We have Item 3B, which is Chapter 207, public 10 information. Mr. Elliston again. 11 MR. ELLISTON: Mr. Chairman, members, my name 12 is Randy Elliston. I'm the Director of Vehicle Titles 13 and Registration Division. The Texas Department of Motor Vehicles requests your approval to post for public comment 14 amendments to Chapter 207 concerning public information. 15 16 The amendments to 207.3 clarify the types of 17 identification that are acceptable for accessing personal motor vehicle information. 18 19 The Department will accept a current photo 20 identification containing a unique identification number. 2.1 The document may be a driver's license or state 22 identification certificate issued by a state or territory

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posted for public comment. These are just for posting for

of the United States, a United States passport, or foreign

passport. And I recommend the proposed amendments be

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1	public comment, not for adoption.
2	MR. RODRIGUEZ: Moved we post the proposal, Mr
3	Chairman.
4	MR. VANDERGRIFF: Do we have a second?
5	MR. CAMPBELL: Second.
6	MR. VANDERGRIFF: We have a motion by Board
7	Member Rodriguez and a second by Board Member Campbell.
8	Do I hear discussion? Mr. Walker?
9	MR. WALKER: No, no, no, I'm just fixing to
10	vote.
11	(General laughter.)
12	MR. VANDERGRIFF: Okay. Then all those in
13	favor please raise their right hand in support of the
14	motion.
15	(A show of hands.)
16	MR. VANDERGRIFF: The motion carries
17	unanimously. Members Rush and Butler are absent.
18	Just when I think I've heard it all from Mr.
19	Walker he comes up with a new one.
20	We're now under 3C of our agenda, which is
21	consideration of the warranty performance proposals for
22	decision.
23	Mr. Harbeson?
24	MR. HARBESON: My name is Bill Harbeson. I'm
25	the Director of the Enforcement Division of the Texas

Department of Motor Vehicles. The Board has before it
today two proposals for decision, and I'm going to address
them at the same time because they're truly the same case.
They involve two scooters that were bought in July of
2008. Thereafter, a complaint was filed by the
complainants about the warranty performance by the
distributor, in this case called Wildfire.

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It was the -- the Board has in front of it two proposals for decision from the administrative law judge at the State Office of Administrative Hearings. It was the finding of the administrative law judge that, one, these were wholesale purchases, the purchasers were franchise dealers of this distributor, Wildfire.

And the judge went on to hold that because these were wholesale purchases, the complainants did not qualify as owners or retail purchasers of the vehicle, and therefore the law regarding these repairs did not apply to them, and has recommended a dismissal of the case.

Today the Nolascos, the complainants in this case, have come to the Board meeting.

MR. VANDERGRIFF: And we do have a card from Mr. Nolasco, who will testify here in a second.

MR. HARBESON: Yes, sir.

Does the Board have any questions about the administrative hearing and the judge's recommendation?

1 (No response.) 2 MR. VANDERGRIFF: Not at this time. 3 MR. RODRIGUEZ: Just for the record, we're addressing both cases, 0229 and 0231 at the same time. 4 5 MR. VANDERGRIFF: Yes. 6 MR. HARBESON: Yes, sir. Yes, we are. 7 MR. RODRIGUEZ: Thank you. 8 MR. VANDERGRIFF: Mr. Bray, did you have 9 something? You're just moving? Okay. 10 All right. I do want to note a couple of 11 things, with respect to -- now we're going to have Mr. 12 Nolasco, I believe he has indicated a desire to testify 13 here today against the recommended proposal. 14 And so I just would like to invite you up at 15 this point in time if you wish to address us, and just to 16 make sure that -- go ahead, please. Thank you, ladies and gentlemen, 17 MR. NOLASCO: and thank you for the opportunity of allowing me to come 18 19 before the Board. The reason we're here is because we 20 disagreed with the final judgement that the judge had 2.1 rendered back a few months ago. And I'd like to argue the 22 case that at the time that we bought these scooters, we 23 were not the dealers. 24 We simply went on the internet, bought some

scooters, and then we started having problems with the

scooters. We called the manufacturer and we tried to resolve this problem. We could never get it resolved.

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It all began when we -- when the shipment arrived the two scooters were just -- they were supposed to have been about 99 percent assembled in the box, meaning that the front wheel was the only thing that had to be installed on them. When we put the front wheel on, the rotor on the front wheel would hit the calipers because the manufacturer had installed the wrong bolts on there.

I called Wildfire Motors, I called them and they said, Well, just grind them off. I said, No, I'm not going to do that, that's altering engineering and I'm not going to do that. They said, Well, we don't have those screws, we just -- they're not available.

And so in order for the wheel to clear I had to put a grinder to the bolts and it cleared the calipers.

The caliper is the braking mechanism of the wheel. A very dangerous altering any part of that system.

The other problem that we had was that there's an axle, the rear axle bolt just kept -- the nut and the washer -- the nut that's on there just continued to come off. It didn't matter what you did. We called Wildfire -- this went on several times. They finally sent me a diagram saying, Well, we're going to send you another

nut, this should fix the problem.

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We put it on and within 50 miles or so the bolts -- the nuts became loose, causing the back wheel just to wobble. And it showed -- like it showed excessive wear on the rear wheel. So I called Wildfire again.

Wildfire said, No, you just have too many miles on it. I said, I only have like 600 miles on it. And they said that there's no problem, that I just didn't know what I was doing.

The other problem we had on this scooter was the charging system. We still haven't -- they do not charge. I asked them for the wiring diagram. There is no wiring diagram available. I can read a wiring diagram, but I -- and probably fix the problem, but there's not one available. I've asked them for a parts manual, there's some parts on it that have broken. They don't have a parts manual either for me to look up these parts.

There's a fly wheel that I believe is going to be where the problem is, where the armature goes, and that's part of the charging system.

In order to get these parts, it requires many, many hours of labor to work on these things. I have probably 2- or 300 hours of labor on these things.

They're just not worth fixing anymore. It doesn't matter what I do to fix it.

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So my point is -- to argue this, it is the difference between wholesale and retail. Okay. Wholesale means that no one, if you go buy this unit, no one from the public can actually go out and buy these scooters. You have to be an exclusive dealer, you have to be approved and go through all these steps in order to purchase these scooters.

I went online without a license and I was issued this title, I have this title here to show, and it comes from Wildfire Motors to me. Okay. There's a big difference. So therefore they are selling it at retail, which means you are selling it to anybody out in the public. I disagree with the judge's ruling in that matter.

Retail means that you can sell it to the public at any price. It doesn't matter even if you sell it at wholesale. And that's my argument, that even though -- it doesn't matter if I paid wholesale, retail, I wasn't licensed to buy these motor scooters. I was simply a consumer that bought them online. And I'm asking that I either return them, give me my money back, and I just don't want to see them on my property.

They're not worth fixing. I can drive them for two or three miles and then I'll spend two or three hours worth of labor, and then we're back and forth with parts

here, and then they send me the wrong parts. And it's 1 2 just not -- it's been nothing but a headache for me. But 3 these -- I am -- again, I'd like to emphasize that I did not buy them as a dealer and I have proof right here. I 4 5 bought them on the internet, and they sent them to me directly, Wildfire, with my name on it. 6 7 Yes, sir. 8 MR. WALKER: Are you a dealer? 9 MR. NOLASCO: Not any more. 10 MR. WALKER: Were you a dealer at the time you 11 bought these? 12 MR. NOLASCO: No, sir, I was not, and that's what I was saying. I was not a dealer when I got this. 13 14 MR. WALKER: You own no franchise and no dealer license --15 16 MR. NOLASCO: No, sir. MR. WALKER: -- in the state of Texas. 17 18 MR. NOLASCO: No, sir. No, sir. After this, 19 then I got one in -- I got a license in September and then 20 I -- with all these problems we were having, I said, no 21 more, because I thought --22 MR. WALKER: When did you purchase the 23 vehicles? 24 MR. NOLASCO: In July.

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MR. WALKER: In July. And then in September

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1 you got a dealers license? 2 MR. NOLASCO: Yes, we started -- we were going 3 to try to start selling scooters, we thought it was a 4 great idea back when gas was five dollars a gallon, and it 5 was just something that didn't work out; we returned our license. 6 7 MR. GILLMAN: Mr. Chairman. MR. VANDERGRIFF: Mr. Gillman. 8 9 MR. GILLMAN: Did you pay sales tax on them? 10 MR. NOLASCO: Yes, sir. Yes, I did. Paid all 11 the -- that's what I'm saying. I went to the courthouse. 12 They charged me sales tax, everything. 13 MR. CAMPBELL: Mr. Chairman. 14 MR. VANDERGRIFF: Yes, Mr. Campbell. MR. NOLASCO: Now let me -- I would like to 15 16 also say something about the question he just asked, the good question you had. But any time you buy scooters off 17 18 of -- from another state, you don't pay tax. Okay. But 19 when you go to transfer the title, you do pay sales tax, 20 and that's what I did. I did pay -- to answer your 2.1 question, I did pay sales tax, so it was sold at retail.

MR. CAMPBELL: Can I ask you a question. You said you bought it on July 8 of 2008, and then --

MR. NOLASCO: Yes, sir.

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MR. CAMPBELL: -- on September 2008 you became

1	a dealer. Those two months that you had the vehicles, you
2	didn't have a problem during that
3	MR. NOLASCO: Yes.
4	MR. CAMPBELL: period of time?
5	MR. NOLASCO: Yes, I did
6	MR. CAMPBELL: Let me
7	MR. NOLASCO: I'm sorry. Go ahead.
8	MR. CAMPBELL: So you had a problem during that
9	time, but you still became a dealer?
10	MR. NOLASCO: Yes.
11	MR. CAMPBELL: Okay.
12	MR. RODRIGUEZ: Can I make a motion?
13	MR. VANDERGRIFF: Mr. Rodriguez, yes.
14	MR. RODRIGUEZ: Well, I move that we deny the
15	relief in both cases, Mr. Chairman.
16	MR. VANDERGRIFF: You're recommending the
17	complaint be dismissed?
18	MR. RODRIGUEZ: Yes.
19	MR. VANDERGRIFF: Okay. All right. Do we
20	have a second for that motion?
21	MR. GILLMAN: Second.
22	MR. VANDERGRIFF: We have a motion and second
23	to recommend that the to approve the ALJ's
24	recommendation the complaint be dismissed. Discussion?
25	MS. JOHNSON: I need to ask counsel well,

first let me ask you, sir, was the price discounted? Like did you buy at manufacturer's pricing rather than what -- like if I went in to a store and bought one of these scooters, did you pay a different amount of money?

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MR. NOLASCO: I believe I -- yes. Yes, I did.

MS. JOHNSON: Okay. And then my question for staff is a manufacturer permitted to sell at retail? That was a tough one, huh?

MR. BRAY: It is a tough one because it depends. In Texas, no, but in another state, yes. And this case is going to involve, you know, contacts and you're really stretching me. Honestly, to answer that question on this one, I think we'd actually have to develop the case a little more to know whether they acted lawfully or not by selling it in Texas. But it's a good question because, as you know, a manufacturer has to go through a franchise dealer in Texas. But people in Texas can go elsewhere and buy vehicles without --

MR. GILLMAN: May I ask you a question? Was Wildfire Motors, they weren't the manufacturers. Right?

MR. BRAY: My understanding is they are the manufacturer, they -- a manufacturer or distributor. It just means that -- I don't too much of the details of this case, but it may be a Chinese or Eurasian scooter and Wildfire may be the American distributor.

1	MR. GILLMAN: Okay. Same question is once you
2	pay sales tax, doesn't that create a retail sale?
3	MR. BRAY: Yes.
4	MR. GILLMAN: It's my opinion
5	MR. BRAY: It's certainly the indicia of a
6	retail sale. I can't say that definitively because there
7	are people that want to try to circumvent the franchise
8	law, might pay sales tax and title vehicles if they're hot
9	enough vehicles to get away with that. But as a general
10	rule, your question your answer the question and the
11	answer are correct that you pay sales tax you're probably
12	buying retail.
13	MR. RODRIGUEZ: I thought he said he didn't pay
14	sales tax from the
15	MR. GILLMAN: Yes, he did pay sales tax.
16	MR. RODRIGUEZ: No, no, but it's not excuse
17	me, he said he paid a tax at registration.
18	MALE VOICE: I thought he said he paid sales
19	tax.
20	MR. RODRIGUEZ: Well
21	MS. JOHNSON: When he registered, but not when
22	he bought it.
23	MALE VOICE: Not when he bought it.
24	MR. RODRIGUEZ: Not when he bought it.
25	MR. BRAY: And just so there's to help clear

1	this up, if I go buy a vehicle in Oklahoma City, generally
2	speaking the Oklahoma City dealer does not collect sales
3	tax, sends me back to Texas, and when I go to register the
4	vehicle, I pay my sales tax there.
5	MR. RODRIGUEZ: But that's not a function of a
6	transaction, that's what I'm that's what I was
7	basically getting at. It wasn't a function of a
8	transaction between him and Wildfire.
9	MS. RYAN: I have a question.
10	MR. VANDERGRIFF: Go ahead, Ms. Ryan.
11	MS. RYAN: Had you applied for application with
12	Wildfire at the point that you bought the scooters online?
13	MR. NOLASCO: No.
14	MS. RYAN: So you applied for their application
15	to be a dealer for them after?
16	MR. NOLASCO: Yes. And can I say something
17	MS. RYAN: And were the scooters sold from I
18	understand what it was titled then, but when Wildfire sold
19	you the scooters, were they sold in your name personally,
20	or in Reno's Rentals?
21	MR. NOLASCO: On the invoice or on the title?
22	MS. RYAN: Not on the title, on the invoice
23	from Wildfire?
24	MR. NOLASCO: On the invoice from Wildfire.

MS. RYAN: The invoice from --

25

1	MR. NOLASCO: Yes.
2	MS. RYAN: was to you
3	MR. NOLASCO: Yes.
4	MS. RYAN: personally?
5	MR. NOLASCO: At the time also Wildfire Motors
6	did not have a license to operate in the state of Texas,
7	did not have a Texas license either. They did not obtain
8	a Texas license until September 19, 2008.
9	MR. RODRIGUEZ: To get back at the question
10	that she asked right now, she said, Was this sold to you
11	as a person, or was it sold to Reno's Rentals.
12	MR. NOLASCO: It was sold to Reno's Rentals,
13	but the title is under my name.
14	MS. RYAN: So Wildfire sold it to you to
15	your company, not to you personally.
16	MR. WALKER: Were you issued a title or an MSO?
17	MR. NOLASCO: A what now?
18	MS. RYAN: It was issued
19	MR. WALKER: MSO or a title, which did you get?
20	MR. NOLASCO: I have a title.
21	MR. WALKER: Not a manufacturer's storage
22	MS. RYAN: You can do that in Texas.
23	MR. NOLASCO: When I went to apply for title, I
24	got a
25	MS. RYAN: MSO.

MALE VOICE: They gave him an MSO and you take 1 2 the MSO and take the MSO and get the title. 3 MALE VOICE: Right. MALE VOICE: It's this thing just to get to 4 5 your title from the --6 MALE VOICE: Dealers get an MSO. 7 MR. GILLMAN: Well, let me say this, if I go in to Oklahoma and I want to buy me a vehicle and I had them 8 9 a hundred dollar bill and they report it, I say it's okay, 10 and I can get an MSO, a manufacturer statement of origin, 11 put it in my pocket and come back to Texas and go down to 12 her office and get a title. But I've got to pay sales 13 tax. 14 MR. NOLASCO: That's what I did. 15 FEMALE VOICE: Which makes it retail. 16 MR. GILLMAN: In my opinion, yes. MR. CAMPBELL: Let me ask one more question. 17 You said you bought it in the name of your company name 18 19 originally. 20 MR. NOLASCO: Well, the invoice -- it was 2.1 invoiced so I --22 MR. CAMPBELL: Invoiced to your company. 23 MR. NOLASCO: Yes. 24 MR. CAMPBELL: But then you transferred, so 2.5 you're --

MR. NOLASCO: No, no, I didn't transfer. 1 2 MR. CAMPBELL: Well, how did you pay tax on it? 3 MR. NOLASCO: Because they issued -- they said, 4 What name do you want on the title, and I said I want Rene 5 Nolasco on it. So when I got the title -- the certificate of origin, I went to the tax office and paid the sales tax 6 7 over there, paid all the closing costs and fees. 8 MR. CAMPBELL: But your company bought the 9 vehicle, and then you titled it in your name. Is that 10 correct? MR. NOLASCO: No, no, I didn't -- yes. Well, 11 12 it was titled -- I didn't change anything through the company. It was just billed to my company, it was not 13 titled under my company. 14 15 MALE VOICE: What do you do for a living? 16 MR. NOLASCO: In the rental business, equipment rental business, and small engine repairs. 17 MR. VANDERGRIFF: I realize that we don't have 18 19 this information in front of us, at least I don't, I don't 20 think I do, but it does note in our information that 12 2.1 exhibits were offered and admitted into evidence, 22 including the invoice for the purchase of the scooters by Reno's Rentals. 23 24 MR. NOLASCO: Yes, sir.

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MR. VANDERGRIFF: So I was going to ask you, so

you agree with that, that that purchase was done on July 1 2 11, 2008. And also a Texas franchise motor vehicle dealer 3 license issued to Reno's Rentals for the sale of motor vehicles manufactured by Wildfire Motors. You have 4 5 that -- you had that license as well. MR. NOLASCO: No. 6 7 MR. VANDERGRIFF: You do not have a license, or did not have a license to --8 9 MR. NOLASCO: I did not have a license. 10 MR. VANDERGRIFF: Okay. When did you get that 11 license? It doesn't say in this record. 12 MR. NOLASCO: September. 13 MR. VANDERGRIFF: Okay. I thought that's what 14 you said. But the complainant, who I don't believe 15 they're here, I do not know that for sure -- but the 16 complainant that testified that -- and the ALJ heard and 17 accepted that Reno's Rentals purchased the scooters from Wildfire Motors at wholesale. And of course you had not 18 19 made a sale. The intention of buying them was to resell 20 them to the public. Correct? 21 MR. NOLASCO: No, sir. No, that was not --22 MR. VANDERGRIFF: So you were going to own 23 these --24 MR. NOLASCO: That's why they --

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MR. VANDERGRIFF: -- personally?

1	MR. NOLASCO: were in my name.
2	MR. VANDERGRIFF: Okay.
3	MR. RODRIGUEZ: When did you title them, sir?
4	MR. VANDERGRIFF: But how come you didn't bring
5	this up with the did you bring this up with the ALJ?
6	MR. NOLASCO: I believe so, yes, sir, I did.
7	MR. VANDERGRIFF: Okay. So they heard this
8	evidence and found otherwise.
9	MR. NOLASCO: Yes, they did.
10	MR. VANDERGRIFF: Okay.
11	MR. NOLASCO: I never titled these things until
12	September because all I had was problems with it ever
13	since they came out of the box. They tried to send me
14	parts here and here, and finally I got them to working,
15	started them and run them on the road. Right now and
16	we titled them back in, I think, October, I believe is
17	when we titled them.
18	MR. VANDERGRIFF: But what does Reno's Rentals
19	do?
20	MR. NOLASCO: Equipment rental company,
21	equipment rentals.
22	MR. VANDERGRIFF: Okay. But that includes
23	MR. NOLASCO: No, this is not no, we don't
24	do we don't rent scooters, we sell equipment, we repair
25	equipment, small outdoor power equipment, blowers, weed

1 eaters, chain saws. 2 MR. VANDERGRIFF: You must have had something 3 in mind when you got a dealer license from Wildfire 4 Motors, or you got a --5 MR. NOLASCO: Yes. 6 MR. VANDERGRIFF: -- franchise agreement, 7 which the state authorized, or recognized. 8 MR. NOLASCO: And that's what I was -- what I 9 said, I was going to -- since the gas at that time was 10 like 4.50 a gallon, I said, you know, what a neat idea to 11 start selling some scooters out here. 12 MR. RODRIGUEZ: May I ask, Mr. Chairman? 13 MR. VANDERGRIFF: Please, Mr. Rodriguez. 14 MR. RODRIGUEZ: With regard to -- a couple of 15 questions, with regard to your franchise license, you said 16 you got that when? MR. NOLASCO: September or October --17 18 September. 19 MR. RODRIGUEZ: When did you apply for it? 20 MR. NOLASCO: I don't know. I wasn't the one 2.1 that was doing it. 22 MR. RODRIGUEZ: Would it be a month before, two 23 months, three months, or at the time that you bought the 24 scooters?

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MR. NOLASCO: Maybe a month or so. I can't

1 remember. 2 MR. VANDERGRIFF: Now you got the license 3 issued from the state of Texas. Correct? 4 MR. NOLASCO: Yes. 5 MR. VANDERGRIFF: Okay. So that -- you had to get to them an evidence of franchise letter, you had to 6 7 get to this Department something, and that usually takes a 8 period of weeks to get that license to you. 9 MR. NOLASCO: Yes. 10 MR. VANDERGRIFF: So you did not --11 MR. NOLASCO: I wasn't the one doing that, I 12 had somebody else doing that for me. 13 MR. VANDERGRIFF: But you're the one that would have got -- your company, and you own the company, it 14 15 would have been the license for you. I mean you may have 16 had somebody working for you --MR. NOLASCO: Yes. 17 18 MR. VANDERGRIFF: -- that did the paperwork, 19 but it was your license. 20 MR. NOLASCO: Yes. MR. VANDERGRIFF: Okay. And you don't know 2.1 22 when you approximately applied for that, and which 23 Wildfire Motors -- because what you're saying, in

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MR. NOLASCO: It might have been two months

September is when the state issued the license.

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1 prior. 2 MR. VANDERGRIFF: Okay. So it would have been 3 July. MALE VOICE: Mr. Chairman, I call for the 4 5 question. 6 MR. RODRIGUEZ: Yes, sir, Mr. Chairman. 7 MR. VANDERGRIFF: Okay. All right. We have a call for the question. When the -- the motion is to 8 9 approve the ALJ's recommendation the complaint be 10 dismissed. All those in favor of dismissing the 11 complaint, please raise your right hand. (A show of hands.) 12 13 MR. VANDERGRIFF: All those opposed? 14 (A show of hands.) 15 MR. VANDERGRIFF: Okay. Please let the record reflect that the motion carries four to three. Board 16 17 Members Rodriguez, Ryan, Campbell and Vandergriff voting in favor of the motion; Board Members Johnson, Gillman and 18 19 Walker voting against the motion. 20 Okay. Thank you. 2.1 The next item is consideration of enforcement 22 motions for disposition based on default. Mr. Harbeson, you're still with us. 23 24 MR. HARBESON: I am, sir. Again, my name is

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Bill Harbeson. We have three cases to present to you

today on staff's motions for disposition because of 1 2 default. 3 I'd first of all like to point out that in regard to motion for disposition number 2, the agenda 4 5 states that the recommended penalty would be revocation of the license and \$2,000 civil penalty, when, in fact, that 6 7 should have read \$1,000 civil penalty and revocation of a license. I just wanted to make sure because it was a 8 9 slight variance from the agenda to what was actually being 10 requested by staff. Again, these cases are based on default after 11 12 notice and hearing. The staff proceeded and the case was 13 then dismissed from SOAH and is now in front of you, and 14 we're requesting that you approve the recommended 15 penalties by staff. 16 MR. GILLMAN: Mr. Chairman, I move that we adopt the motions, with the exception of the -- making it 17 \$1,000 instead of \$2,000. 18 19 MR. VANDERGRIFF: Okay. And your motion is for 20 all three items here? 2.1 MR. GILLMAN: Yes. 22 MR. VANDERGRIFF: Okay. We have a motion by 23 Mr. Gillman. Do we have a second?

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MR. VANDERGRIFF: Second by Mr. Rodriguez.

MR. RODRIGUEZ: So move.

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discussion?

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(No response.)

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MR. VANDERGRIFF: Please, if you're voting in

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favor, vote by raising your right hand.

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(A show of hands.)

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MR. VANDERGRIFF: I

MR. VANDERGRIFF: The motion carries

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unanimously of Board members present, with members Rush

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and Butler being absent today. Thank you very much.

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Our next action item is 4A, which is the

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approval of specialty plate designs.

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MR. ELLISTON: Mr. Chairman, members, for the record my name is Randy Elliston. I am the Director of

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the Vehicle Titles and Registration Division. The state

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specialty plate vendor is requesting approval of nine

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specialty plate designs, and the Texas Bicycle Coalition

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Fund is requesting approval of one non-vendor specialty

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plate design to be administered by the Texas Education $% \left(1\right) =\left(1\right) +\left(1\right) +\left($

18

Agency.

Each of these were included in your briefing

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book. These plate designs have been published on the

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Department's website for public comment. Those comments

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are also included in your book. In addition, the plates

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have passed legibility and reflectivity testing. The

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Board has the authority to approve or disapprove the

specialty license plates in accordance with the

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1 Department's rules. I also today have brought a display here of all 2 3 the plates that are before you today, so you could actually see the actual plate, not just what's on the 4 5 paper. The plates displayed, the one on the bottom right is the non-vendor plate, the rest are vendor's plates. 6 7 MR. VANDERGRIFF: Okay. Any questions of Mr. Elliston? 8 9 Mr. Walker. 10 MR. WALKER: Can we get a horse put in the 11 Texas Trails plate? 12 (General laughter.) MR. ELLISTON: That seemed to be a real strong 13 sentiment from the public who commented, but that was 14 designed by the sponsor of the plates, so I would say, no, 15 16 sir. 17 MR. VANDERGRIFF: All right. MR. RODRIGUEZ: I thought you were going to ask 18 19 for one rig or some one of these tractor trailers. 20 MR. WALKER: Did you read the comments? MR. RODRIGUEZ: Yes. 21 22 MR. WALKER: Everybody wants a horse and 23 that's --24 MR. VANDERGRIFF: Okay. We do -- go ahead, Mr.

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Elliston. I was going to say we do have --

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MR. ELLISTON: I'm just waiting on your approval or disapproval, sir.

MR. VANDERGRIFF: Yes, I will note that we do have one member in the audience who I'm assuming is still with us, Robin Stallings, that was looking to -- from Bike Texas, the Executive Director.

MR. STALLINGS: Thank you, Chairman, Board members. I really appreciate you all considering this. Our request is that you approve the plate. We actually thought about and considered a horse in the plate because horses are a very important part of Texas Trails and we work with equestrians all the time. We think it's very important to show the trails.

However, there's another rule that says that you can't conflict with an existing plate. And because there's already a horse, say the Quarter Horse, that we were concerned that we would have a potential conflict with another group that would want to benefit from the revenues of a horse plate. So we actually left it out, out of no disrespect to the equestrians or horses, but, in fact, out of thinking about them.

But I'm sure that those commenters didn't realize that they might be cutting into one of their own groups' revenues if they did that, because then people would have to contend with us again in the future and

they'd have to get our approval if they wanted to add a 1 2 horse to a plate, not just the Quarter Horse Association. 3 So that's why we left it off. However, if it's the feeling of this Board that 4 5 it's, you know, important enough to include a horse, we would definitely revisit it and it wouldn't be that 6 7 difficult to get a silhouette buried in that design, you know, working in there somehow with a horse. But we're 8 9 okay with the plate the way it is also. 10 MR. GILLMAN: So would approve a Sheltie in 11 there? MR. WALKER: No, you know --12 13 FEMALE VOICE: It's like the bicycles. 14 MR. STALLINGS: And with a relatively few 15 number of comments, it's pretty easy to kind of, you know, 16 sway one way or the other, so think a few active horse people might -- a lot of those comments seem to ring with 17 a similar voice. So I'm not sure, it might have been one 18 19 very active person that really cares about horses. 20 MR. WALKER: Well, did you read all the 2.1 comments? 22 MR. STALLINGS: I did. 23 MR. WALKER: There's a hundred comments about 24 people wanting a horse in there.

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MR. STALLINGS: There was a lot and they made a

good point, but that's why we didn't include a horse in 1 2 there. We did think horses are an important part of the 3 trails, and we advocate for trails of all types, multi-use 4 trails. 5 MS. RYAN: I think the question might be from a 6 saleability standpoint, do you feel you need a horse, and 7 if that's the case, then I guess you would tell us whether 8 you want us to vote on it or not. 9 MR. STALLINGS: Well, again, we think we would 10 need to probably go to the Quarter Horse Association, some 11 other horse groups to see if there's any other conflicts 12 or any existing plate that has a horse on it. So that could be some delay, that would concern us. 13 14 You know, we feel like there's four million 15 people ride a bicycle at least once a year, probably a lot 16 more than that run or walk on trails, so we probably feel like we've got a pretty good pool to sell our plates to. 17 MS. JOHNSON: Mr. Chairman, I would like to 18 19 move to approve these plate designs as presented. 20 MR. VANDERGRIFF: We have a motion from the --MR. GILLMAN: Second. 21 22 MR. VANDERGRIFF: -- Vice Chair. Do I have a second -- second from Board Member Walker. 23 24 MR. WALKER: No, no, no, no, I didn't --

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MR. GILLMAN: Chairman --

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1	MR. VANDERGRIFF: Mr. Gillman. I apologize.
2	Board Member Gillman. I thought I heard Mr. Walker's
3	voice.
4	MR. WALKER: We look a lot alike.
5	MR. VANDERGRIFF: I wouldn't suggest that.
6	(General laughter.)
7	MR. VANDERGRIFF: Anyway, we have a motion and
8	a second. Do we have any discussion?
9	Mr. Walker?
10	MR. WALKER: I have a question, and this shows
11	a little bit of my ignorance maybe. But the Texas Trails
12	plate, you are you're not part of the My Plates
13	program. Correct?
14	MR. STALLINGS: Correct.
15	MR. WALKER: It's a non-profit, so was this
16	plate created through legislation, or how does this plate
17	come about that we can because I thought we had a
18	private vendor that was making plates for the state, so
19	how did we come up with another party making plates?
20	MR. BRAY: They're not making the plate
21	MALE VOICE: No one does, we make the plates.
22	MD 133 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
	MR. WALKER: Well
23	MR. WALKER: Well MR. BRAY: They are engaging with My Plates,
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plate.

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MR. STALLINGS: With due respect, there's --

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MR. WALKER: Does My Plates have the authority

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to do that?

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MR. BRAY: Well, this is where --

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MR. ELLISTON: You're talking about a different plate. This is a non-vendor, it's not a vendor plate. This plate is sponsored by the Texas Education Agency. It has to be sponsored by a state agency for them to be able to develop the plate and some -- the revenue -- some of the revenue from the plate goes to the organization.

MR. STALLINGS: The legislature established kind of a two-track option, so there's a My Plates option and there's a directly with the Department of Motor Vehicles option. And we already have a history with the Department and we chose to go with the Department of Motor Vehicles option. One reason is because we have another bicycle plate, and it was important that our plates cost exactly the same so that the mountain bikers didn't have to pay more than the road bikers, or we'd all hear a lot of grief about it, so.

But both very valuable, valid ways to go, but we chose an administrative course. Our other plates were done by statute. But this is -- the legislature kind of set it up to have a non-statutory way to get plates and then they kind of worked in the private vendor stuff at

1 the same time. 2 MR. RODRIGUEZ: But this process was in place 3 prior to the vendor becoming part of the process. MR. STALLINGS: The vehicle, or better yet the 4 5 bicycle by which you get here. Get that? (General laughter.) 6 MR. WALKER: Bicycles are considered a vehicle 7 8 according to our legislature? 9 MR. RODRIGUEZ: The vehicle by which you get 10 here is through an educational sponsor, which is -- and 11 they are -- go ahead. I'm sorry. 12 MR. STALLINGS: Well, it needs to be a state 13 agency, for example we had the Parks Department and Texas 14 Education Agency, both offered to sponsor our plate and we 15 work closely with both agencies. 16 MR. RODRIGUEZ: All right. The vehicle by which you get here is through a state agency sponsor as --17 and that's what I'm trying to get, this answer. 18 19 MR. WALKER: I just didn't know you could do 20 that mechanism to get here, except through either My Plates or through the legislature. 2.1 22 MR. SERNA: No, sir, that's the third option is

MR. ELLISTON: And stay tuned, there'll probably be a fourth at some point.

what was just described.

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1 MR. STALLINGS: And while I've got the mike, 2 I'd like to throw in one other thing, that our plates will 3 probably generate about a million dollars in the next 10 years for state revenue, and then several times that in 4 5 the value of additional grants and stuff that we're able to leverage. So the non-profit side of the plate, you 6 7 know, is a great benefit to the state of Texas that is administered by the Department of Motor Vehicles, but it's 8 9 not small change. It turns into quite a bit of money for 10 the state as well.

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MR. WALKER: A million dollars --

MR. STALLINGS: Over the next 10 years. So think of it as about 80-, 90-, 100,000 a year that the state gets out of the four plates that we have total, counting this new one.

MR. WALKER: That's gross sales though.

MR. STALLINGS: No, that's what the state gets. The gross will -- you know, for example this plate will generate -- it would cost \$30, \$8 stays with the state, \$22 comes to the organization. We use that \$22 for matching grants and for working capital for reimbursement grants, so we're able to actually leverage it quite a bit for education programs, mostly bicycle safety education.

MR. WALKER: So over the next two years \$10 a plate -- \$8 a plate we're going to get a million bucks?

1	MR. STALLINGS: Ten years.
2	MR. WALKER: Oh, ten years.
3	MR. STALLINGS: Well, a lot of the plates
4	for example we're thinking in 10 year terms now, when you
5	can buy a plate for \$550 that'll last you 10 years. We
6	realize that revenue in the first year, the state does.
7	But it's people have the plate for 10 years, so that's
8	nine years you won't continue to get revenue from that
9	plate. Ours may not generate as much in one year, but if
10	you look at the same 10-year period, it turns into quite a
11	bit of money.
12	MR. RODRIGUEZ: I have just one question.
13	MR. VANDERGRIFF: Okay. The question has been
14	called.
15	MR. RODRIGUEZ: Can I ask one question
16	before
17	MR. VANDERGRIFF: Sure.
18	MR. RODRIGUEZ: Just one question. Randy, all
19	these things have passed the license meter testing and all
20	that stuff?
21	MR. ELLISTON: Yes, they've all passed
22	legibility and readability.
23	MR. RODRIGUEZ: All right. That's it, Mr.
24	Chairman.
25	MR. WALKER: Wait, one more question. It has

nothing do with this, it has to do with how we're going to vote on this because she's called a motion to vote on all of those. Are we going to vote to the collective group or are we going to vote individually?

Because if we're going to vote collectively, I think we're denying that there's some comments on these plates here. For example, one of these plates, 70 percent of the public comments don't like the plate. Are we just ignoring that?

MR. VANDERGRIFF: Would you like to pull that plate out for special consideration and an individual item? You certainly can either amend or ask that the motion be amended to remove that plate and if you want to talk about it.

MR. WALKER: The NASCAR plate, 68 percent of the people, and there's even a comment by law enforcement that the 88 number -- now there's also further comment that says the 24 plate has already been approved for Dale Earnhardt -- I'm mean for, yes, Gordon, I guess, and that this is a Dale Earnhardt, Jr. plate, but that there's some -- the law enforcement concern, but furthermore that the 68 percent of the people, and I don't know whether people don't like Dale Earnhardt, Jr. or not, but --

MR. RODRIGUEZ: Well, I mean these will bought only by those than want them. I mean wouldn't that be the

case, number one. And number two, that's why I asked the question about whether or not they've passed the tests and everything. They're telling us they passed the tests of reading, in license plate readers, and all the things that we have set forth in that regard. And then I'm okay.

MR. WALKER: I guess my only question I have is why do we public comment if we're not going to take any public comments under consideration? Why do we do it?

MR. RODRIGUEZ: I think we asked them to do it.

MS. RYAN: Well, I think some areas of public comment would bring up things of maybe more than just a personal opinion, I like or dislike, but something that maybe it's offensive that we may not have realized, or something like that. But if it's a kind of I don't like it, or I don't like that shade of blue, or those type — it depends on the type of comment, I think.

But if the majority were to say something was offensive, that maybe we had not realized, that is certainly something I think we'd want -- I think we'd want to know that from the public.

MR. STALLINGS: Also, there's potential conflicts with existing plates that somebody might inadvertently miss, in addition to something offensive.

You know, the -- you know, so I think that's very valuable to have that process, and it's probably a good idea to

sort out, you know, personal opinion versus, you know, 1 2 like even -- like all those were very valid comments about 3 not having a horse on the plate, they were all right. There's nothing wrong with them, they just didn't have all 4 5 the information. But so I think it was still valuable 6 that people got to comment on that. MS. JOHNSON: I would also call for the 7 8 question. 9 MR. VANDERGRIFF: Okay. Well, I want to 10 acknowledge the call for the question, but I would ask 11 again, Mr. Walker, if you would like to have an individual 12 plate pulled out, I'm happy to entertain that, or perhaps 13 even -- perhaps Vice Chair Johnson would make the motion 14 that would entertain pulling that one plate out if you 15 want to. 16 (Pause.) MR. VANDERGRIFF: I feel like the game show 17 where the clock is ticking. 18 19 (General laughter.) 20 MR. VANDERGRIFF: Would you like her to amend the motion, or do you --2.1 22 MR. WALKER: No, let's just go. 23 MR. VANDERGRIFF: Okay. 24 MALE VOICE: It's a washer for you. 25 (General laughter.)

MR. VANDERGRIFF: Okay. We have all 10 of the 1 2 plates on the -- in this motion, and the motion is to 3 approve those plates. Please raise your right hand in 4 support of the motion. (A show of hands.) 5 MR. VANDERGRIFF: The motion carries 6 7 unanimously of those present. Again, Members Butler and 8 Rush are absent. Thank you. 9 We have already covered 4A, and we are now on 10 Action Item 4C, and that was just the consideration of setting a date for the annual election of the Vice Chair. 11 12 MR. RODRIGUEZ: Mr. Chairman, I move we have 13 such election every January of every calendar year. 14 MR. VANDERGRIFF: We have a motion. Is there a second on that motion? 15 MALE VOICE: What was the motion? 16 MR. RODRIGUEZ: That we have an election for 17 vice Chair every January of every calendar year. 18 19 MALE VOICE: Where are we here? 20 MR. VANDERGRIFF: We're in 4C on page 8. Chief 2.1 Rodriguez had asked me, and it's my standing practice if 22 any of you ask to put something on the agenda, it's just 23 literally that we do not have the administrative procedure

to set a date for an annual election of the Vice Chair.

He had asked for that to be considered. So it's on the

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1	agenda.
2	MR. GILLMAN: Did we elect the last one?
3	MR. VANDERGRIFF: Yes, we did. They elected
4	the Vice Chair.
5	MR. GILLMAN: I did that?
6	MS. JOHNSON: Yes, you did.
7	MR. GILLMAN: I voted for who? No
8	(General laughter.)
9	MALE VOICE: So there's a way we can get rid of
LO	Cheryl
L1	MS. JOHNSON: Oh, you can do that right now
L2	without waiting until January, so, you know, the only
L3	comment I would have
L 4	MR. RODRIGUEZ: Mr. Walker
L5	MS. JOHNSON: and I appreciate
L 6	MR. RODRIGUEZ: I nominate Mr. Walker to
L7	fill in.
L 8	(General laughter.)
L 9	MR. RODRIGUEZ: We'll keep it in Houston, yes.
20	MS. JOHNSON: And I don't have any issue with
21	establishing a month, it's just, you know, if you get
22	really mad at me this month, you can get rid of me right
23	now, so I'd hate to tie your hands.
24	MR. RODRIGUEZ: Well, this would avoid having

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to do it on a basis of we're mad at somebody. This would

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1 just add every -- once a year we get a chance to vote 2 somebody in or --3 MALE VOICE: What's your feeling on that? MR. VANDERGRIFF: As to whether we would have 4 5 that or not? It wasn't something I would have thought about, at the same time, it's perfectly legitimate to call 6 7 for that question on an annual basis, if the Board so chooses. 8 9 MR. CAMPBELL: Mr. Chairman, just discussion on 10 it, in that I think the new officers, two guys go off and 11 you've got two more coming on, and they may need to be part of that selection process. So it would -- if that's 12 13 the case, that happens, I quess in February or --14 MR. VANDERGRIFF: That's correct. Well, yes, 15 the two you're speaking of -- are you making your own 16 personal announcement to the world at this point -- but you're just speaking of one for sure. But the three 17 18 members' terms expire in February of this year, and all 19 are eligible for reappointment, some may choose not to be 20 reappointed. And I guess your point is that if we're going to have an annual election, it might ought to timed 2.1 22 when -- after a new Board is here to be seated. 23 MR. CAMPBELL: Yes, sir. 24 MR. VANDERGRIFF: Okay.

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MS. RYAN: Would they have enough information,

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do you think, to -- within a 30-day time -- I mean I don't 1 know, I wasn't here for the first vote so I don't know --2 3 MR. VANDERGRIFF: I will tell you --4 MS. RYAN: -- the process. 5 MR. VANDERGRIFF: -- from personal experience, 6 having just gone through that in another board I serve on, 7 that the new members are seated the month in which they 8 are voting on a chair and vice chair, and they have 9 absolutely no idea, and one of them said, I'll just --10 however, you all tell me I'm supposed to vote, which isn't 11 exactly what they should say. 12 MS. RYAN: Which is exactly my concern. Right. MR. RODRIGUEZ: So why don't we move it to like 13 May then? 14 15 MR. GILLMAN: You just wanting to establish a 16 date, aren't you? MR. RODRIGUEZ: Yes, and all I'm saying with 17 18 that regard, we may get appointments in February, and we 19 may get appointments in December, so you can't go by that 20 date, so all I'm saying is you're trying to establish a rhythm here by which we vote somebody and I'd like to 2.1 22 see -- and I checked with Mr. Campbell, I'm not sure he 23 wants to come back -- I'd like to see him go out as Vice

Chair, if -- and that would give us a chance to put him in

that position come January, if that's what he wants to do.

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1	MR. VANDERGRIFF: We do have a motion to set
2	the date in January for an annual election, and
3	FEMALE VOICE: I'll second the motion.
4	MR. VANDERGRIFF: And we have
5	MALE VOICE: In January? Prior to the new
6	people
7	MR. RODRIGUEZ: You know, I'm easy. You want
8	another month, we'll I mean before she goes real strong
9	on her second, but what I'm just saying give us the
10	process by which establish a
11	MALE VOICE: In fact, it ought to be when you
12	get the new members
13	MR. RODRIGUEZ: And that's okay. I'm just
14	saying with that regard we don't know when that may be.
15	It could be that they don't get the replacements, and they
16	would serve until so replaced if they wanted to.
17	MR. VANDERGRIFF: I will also note for the
18	record that's exactly right, because I serve on another
19	board in which the member appointed by the Governor would
20	love to get off and he's at 14 months and counting, and
21	he's still on. So Mr. Campbell
22	MR. RODRIGUEZ: Anything more than two months
23	is
24	(General laughter.)
25	MR. VANDERGRIFF: He lost all first, he lost

all color, now he's red and flushed at the prospect of 1 2 that. But I would note that Chief Rodriguez is correct, 3 you never know when that appointment comes through. 4 MR. RODRIGUEZ: And if there no any way, you 5 know, you may want that second seat to be helping them as opposed to making them -- it was just -- all I'm asking is 6 7 that we establish a process by which we get more done and we can clear any expectation for everybody's benefit. 8 9 MR. GILLMAN: Is the Vice Chairman always 10 nominated by the Chairman? 11 MR. RODRIGUEZ: The membership. 12 MR. VANDERGRIFF: It's the Board nominating 13 them. 14 MR. RODRIGUEZ: Whomever you want nominated --MR. VANDERGRIFF: You know, it could be a 15 contested race, if that's the case, but the last time I 16 17 distinctly remember Mr. Gillman making the nomination -and he may not, but --18 19 (General laughter.) 20 MR. RODRIGUEZ: So my motion is for January. Do you want to make it another month, I mean --21 22 MR. WALKER: I propose that we move it to 23 around May. 24 MR. RODRIGUEZ: I'll modify my motion, Mr.

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Chairman, to May.

MR. VANDERGRIFF: All right. We have a motion 1 to set annual election date of May, the first will be in 2 3 May of 2011. Do we have a -- excuse me. Pardon me? MALE VOICE: Linda Ryan had seconded. 4 5 MS. RYAN: Second. MR. VANDERGRIFF: Yes, I was going to say, did 6 7 we remember Ryan had seconded this. 8 MS. RYAN: I second it. 9 MR. VANDERGRIFF: I apologize. That's what I 10 was going to ask. 11 And with a motion and a second, any further discussion? 12 13 (No response.) 14 MR. VANDERGRIFF: Please raise your right hand 15 in support of the motion. (A show of hands.) 16 MR. VANDERGRIFF: The motion carries 17 unanimously, and members Rush and Butler are absent today. 18 19 The next item on the agenda, I'll be very 20 brief, is just Chair reports from me. We continue to have 2.1 contact, and this last month did speak again before the 22 Texas Senate, and gave them kind of the same information 23 we've been giving them with respect to this Agency's -- or 24 this Board's position on the future direction of the

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Agency.

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I think I noted in comments to the Board, and just an FYI, that there was a first year anniversary celebration that the employees of the Department of Motor Vehicles put on this last Friday, and I was asked to attend. I was a minor part of the agenda, did speak a little bit there. Mr. Serna mc'd it and -- but really the major part of the agenda was the employees themselves.

And they gave awards to both individuals and teams for leadership, team work, customer service and creativity. But they used the vision that this Board had adopted, was worked on very hard by several members of this Board as kind of the criteria of how they judge the team members and the individuals in those categories, and I must tell you that in listening to those discussions about them, I was very impressed with the things a lot of those individuals, employees, had done.

I also will tell you that another part of the meeting was that at two different times, four in the morning and four in the afternoon, your divisional director spoke and --

FEMALE VOICE: 4:00 a.m.?

MR. VANDERGRIFF: It was four in the -- excuse

If I said 4:00 in the morning, I apologize.

MALE VOICE: Four directors.

MR. VANDERGRIFF: Four directors. Four in the

morning and --

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2 FEMALE VOICE: Oh --

MR. VANDERGRIFF: Backing up --

(General laughter.)

MR. VANDERGRIFF: My mind was ahead of my words. There were two sessions with the employees in order to break them up so that we didn't have all of the employees in one session and nobody doing the state's business and the Agency's business. And at those two sessions, one in the morning and one in the afternoon, four directors each spoke.

MALE VOICE: Oh, much better.

MR. VANDERGRIFF: And I will tell you they all, I thought, gave very great remarks that benefitted them and their people well about their leadership. So I was very appreciative of those, particularly as it related to customer service and the employees themselves. So they did a very nice job with that. It was nice, very simple, but a very nice function. So I want to note my appreciation to the employees of the Department of Motor Vehicles and to the staff for working that. It was very good.

And we obviously will be coming into a session here pretty quickly. I do want to also note that several industry groups, which I think is a byproduct of the

either to me or to Vice Chair Johnson or to others and talking about some of their issues and actually have provided language on some things they're interested in. So I see that as us being a good resource. We'll certainly report back to this Board is there are actions to be taken by this Board.

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The Board had previously adopted a position with respect to the -- what we call the self-directed semi-independent, that bill may be a hybrid, but we are proceeding, or will proceed with drafting some language to that effect, and you all will be seeing that.

And then last but not least, I expect that this Agency will be called upon shortly in more than just informational on a bill that was passed in the last session, which is the fee simplification bill when it struck the number of categories. It takes effect this September, and we will have some financial issues associated with that that I suspect this Agency will have a major role in that. So more to come on all of that as well.

But with that I'd turn it to the Executive Director for any reports that he has.

MR. SERNA: Very quickly, one of the things I'd like to recommend, and I'll do it for the entire Board,

that I bring up at the next Board meeting is a discussion
on that fee simplification issue. Informational item
only, but I believe all the Board members probably need to

be up to speed on what the potential issues are.

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So, Mr. Chairman, if you'll indulge me adding an agenda item to the December agenda where I brief the Board on the fee simplification issue, just so that all the Board members are up to speed on that. And I'll keep it at a high level briefing and answer any questions you might have.

Also, the organizational assessment that you authorized us to move forward on, last month -- I want to give you a head's up that next month we'll be coming to the Board also with a statement of work that we'll incorporate into a request for proposal. We'll also have a time line for procurement that we'll present at the December meeting as well.

I've provided some information to Board Member Ryan and then have spoken to Board Member Gillman and will provide him with similar information basically that outlines some high level drafts so that we'll have a statement of work that will get incorporated into a procurement document that we'll put out.

The high level time line, I'll tell you right now, is our goal is to have the bid on the street, for

lack of a better description, in January, go through the procurement process, come back to the Board with recommendations for selection closing that and executing that contract, and then being prepared to actually conduct the assessment before the session ends, or depending on what the legislature is providing to us, as quickly as possible after the session ends so we can take into consideration everything that the legislature is assigning to the Agency. But we will have some activity going on before the session is over.

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I know it will come up, in a little while I'll ask Linda Flores to come up and talk very briefly about our financial statements. We've got the -- and then we did take to heart the issues that were raised at the last Board meeting, so we did post a monthly financial statement, including the previous month's statement. We want to make sure that we can provide the Board with that information. And I'll ask Linda to come up in just a second.

The other thing I want to mention is with regard to the Vision 21 project, we're sending an update out to the Board, to each of the Board members later this week. The second part of that project, which is the business process analysis, I'll be bringing back to the Board probably at the December Board meeting, if we get

all the responses back from vendors.

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The results from a solicitation that we have out on the streets right now to have a vendor come in, a consultant come in and conduct that business process analysis, I want to make sure that the Board is aware of what we're doing and signs off on how we're moving forward before we move forward with that. So I'll have another agenda item. I seem to be giving you head's up on what's coming in the December agenda, but I thought that'd probably be worthwhile.

And then the last thing I wanted to mention -I'm sorry, two more things I wanted to mention, on
November 20 we have due to the Comptroller an annual
financial report. It's not a financial report similar to
what you all are probably used to in your firms. This is
a set of schedules that the Comptroller's office sends out
and the agencies basically -- and I'm not trying to
minimize what the staff is doing, but the agencies
basically fill in the blanks on here's, you know, various
expenditures or -- and/or budgeted items -- well,
primarily expenditures. It goes to the Comptroller's
office and then the Comptroller rolls it up to a higher
level statewide report.

Staff is working on that right now, it's due to the Comptroller on the 20th. I'll make sure that a copy

is sent to the Board as well. No Board action is required on that particular financial statement, unlike the LAR and the operating budget and the strategic plan. There is no Board action required on that.

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ask Linda to come up is the survey of employee engagement. Our survey did go out to our employees. I had mentioned it the last Board meeting -- it did go out to our employees. I was very pleased, though these are very tentative numbers that we got back, but I was very pleased that we had over 70 percent participation from our employees in completing the survey.

We will not have any results back from the University of Texas until somewhere between 30 to 60 days from the beginning of this month. If I do have survey results back before the next Board meeting, then we will -- I'll present those to the Board. If not, then it'll be the meeting after that.

But the reason I'm pleased about that participation is we're a new agency, our employees really want to be engaged at helping set a benchmark to help measure our future operations, so I was very satisfied with that.

And with that, if no one has any questions about any of the things that I've mentioned, I'd like to

get Linda to talk about the financials very quickly. I'll give you an -- come on up -- I'll give you an overview and that is I think we're doing okay from a financial perspective. There's the 100,000 foot overview.

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MS. FLORES: For the record my name is Linda Flores. I'm the Chief Financial Officer for the Agency. And as Mr. Serna indicated, yes, we are working on the annual financial report, and if it was as easy as he indicated, it would go a lot faster.

Because of the timing, in order to compile the information for the Board books, we have decided to ensure that we give you complete information. So what's in your Board book today is information that you probably recall from last month. This is for the month of September.

We're identifying the revenue and expenditures for the Agency's operations. As well, on page 2, it's a reminder of what our goals are for this fiscal year.

Our revenue estimate for registration, titles, and merchant transportation fees is approximately \$1.1 billion. We have pledged a 5 percent general revenue reduction of \$727,000.

MR. VANDERGRIFF: Okay. Can I stop you for one question for a point of information on the 1.1 billion, that number, is that from our estimate, or does that come from TxDOT? Who makes the estimate of the numbers?

MS. FLORES: Currently the Department of 1 2 Transportation makes the official estimate. 3 MR. VANDERGRIFF: Okay. I just wanted to make sure the Board understood that. Sure. 4 5 MS. JOHNSON: Is this -- the 1.19, is that not 6 what is typically 4 billion? 7 MR. VANDERGRIFF: No. MS. JOHNSON: Isn't it --8 9 MS. FLORES: No, no, no. 10 MR. VANDERGRIFF: It's a -- yes, and by the 11 way, that number's also a net number, is it not, from the --12 13 MS. FLORES: Correct. 14 MR. VANDERGRIFF: -- what is paid out to -- in commissions and fees? 15 16 MS. FLORES: That's net, yes. MR. VANDERGRIFF: That's correct. 17 MS. JOHNSON: Thank you. 18 19 MS. FLORES: Moving on to page 3, our 20 expenditures in September were 7.3 million, compared to 2.1 3.7. At last month's meeting you asked me for additional 22 detail, and I did identify that this includes two things, 23 cash expenditures that actually incurred in September, as 24 well as payables that were still sitting out there at the 2.5 end of August. Because I moved the budget forward, I

1 wanted to make sure that we were comparing apples to apples in FY '11. 2 3 So I identified the revenues that we generated in September, 98.7 million in Fund 6, and 4424,000 in 4 5 general revenue. We have a further break down of the revenues on page 4 for your information. 6 7 MR. VANDERGRIFF: This is not what -- that 8 actually went in by category into Fund 6, but what we took 9 out for support of our operations. Correct? 10 MS. FLORES: This is on page 4 --11 MR. VANDERGRIFF: Page 4. 12 MS. FLORES: -- the revenue? 13 MR. VANDERGRIFF: Yes. 14 MS. FLORES: It's revenue we actually 15 generated. MR. VANDERGRIFF: Yes, but it's what we -- it's 16 the part that gets given to us through --17 MS. FLORES: Yes, sir. 18 19 MR. VANDERGRIFF: Okay. Because --20 MS. FLORES: For our Agency, yes. 2.1 MR. VANDERGRIFF: Yes. Because there's 22 obviously more revenue generated, it's part of that 1.1 23 billion. 24 MS. FLORES: Sure. 2.5 MR. VANDERGRIFF: Yes.

1	MS. FLORES: Expenditures for Texas Insurance
2	Verification program and Vision 21 are detailed on page 5.
3	MR. WALKER: What is TexasSure Verification?
4	MS. FLORES: That's the insurance verification
5	with the Department of Insurance where if you get stopped,
6	they can check to see if your insurance is current.
7	MR. SERNA: Our role go ahead, sir. I'm
8	sorry.
9	MR. RODRIGUEZ: It's the link between the DPS
10	inquiries, the data site and the insurance company
11	Before you go over to check their vehicle, we
12	can actually determine whether or not it's insured if
13	everything's right. But there's some problems with that.
14	MR. WALKER: Who gets the \$338,000?
15	MS. FLORES: Department of Insurance, and they
16	in turn have a contract with a vendor, with a third-party
17	vendor.
18	MR. SERNA: Our role, Mr. Walker, our role is
19	simply a money handler. And in our legislative
20	appropriations request for fiscal years '12 and '13, we
21	requested to be removed from that role and that these
22	monies go straight to the Department of Insurance. But
23	for the time being, that's still in our budget.
24	MR. WALKER: That was in our LAR, we requested
25	it be

1	MR. SERNA: Yes, sir.
2	MR. WALKER: taken out.
3	MR. SERNA: Yes, sir. And that's what this is.
4	This fiscal year unfortunately we're still that money
5	handler.
6	MS. RYAN: Is that oh, go ahead.
7	MR. RODRIGUEZ: Just some of this is just is
8	still tied back to the Automobile Theft Prevention
9	Authority, so some of that is all interlinked together.
10	At the end of the day, what gives us the ability is to
11	basically run a I mean check on the registration of a
12	vehicle, let's say, and determine whether or not it's
13	licensed. That's the theory, that's a working theory.
14	MALE VOICE: Whether it's insured.
15	MR. RODRIGUEZ: I'm sorry, whether it's
16	insured, yes, sir.
17	MS. RYAN: Don't we also use it when we renew
18	registrations online?
19	MS. FLORES: Uh-huh.
20	MS. RYAN: So we use it in BTR as well?
21	MALE VOICE: Yes.
22	MR. WALKER: Victor, how accurate is
23	MR. RODRIGUEZ: There's some problems and
24	MR. WALKER: If I cancel if I'm going to
25	cancel my insurance tomorrow

1	MR. RODRIGUEZ: And that's the timeliness
2	You may not know. It's not real plain. There
3	was an article on TexasSure that came out about six or
4	seven months ago and we all got a copy y'all remember
5	seeing that? That's if you go back and look at that
6	MALE VOICE: The \$156,000
7	MS. FLORES: Specifically?
8	MALE VOICE: Got it.
9	MR. VANDERGRIFF: Also, make sure everybody
10	turned off their mikes earlier and I failed to note that
11	you should turn it back on.
12	MR. WALKER: Do we have an idea where the
13	Vision 21 is spent?
14	MS. FLORES: Yes, sir, on page 7 you can see a
15	portion of that is spent on communication services, data
16	processing services, 42
17	MR. WALKER: The copy that I got from you on my
18	Board packet here is illegible on
19	FEMALE VOICE: We can't read it.
20	MS. FLORES: Oh, I'm sorry.
21	MR. WALKER: They're all
22	MS. FLORES: It's too small?
23	MR. WALKER: they're all
24	MS. JOHNSON: I don't think any of us can read
25	these numbers.

MS. FLORES: No. 1 2 MR. WALKER: I tried to look at those last 3 night, I couldn't read any of them. MR. VANDERGRIFF: In addition to being small, 4 5 they're smudged. MS. JOHNSON: We can't really tell what it 6 7 says. 8 MS. FLORES: Well, what I've got is that Vision 9 21 spent in the month of September approximately \$42,240 10 on communication services. 11 MALE VOICE: Well, does it --MS. FLORES: This is --12 13 MALE VOICE: Telephone? 14 MS. FLORES: Yes, or data lines, or it could be 15 different items. I'd have to go back and get the details of that for you, which I can do. Some of it was -- they 16 17 also had other expenditures and professional services, that totaled \$156,000. 18 19 MR. SERNA: The primary expenditures, or the 20 primary things that make up the 156,000-plus dollars are 2.1 contract programmers and contract project managers. 22 communications issues that Linda's talking about are where

we needed to acquire additional bandwidth with some of the

pilot counties, for some of our releases in RTS. We'll

provide a more specific detail, but it's primarily going

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to go to staffing, or rather staff augmentation, and then some other operating expenses.

MR. WALKER: I'm not real sure that the -- I'm not real sure we're going in the right direction on that.

MR. SERNA: I understand, and what I'll do is prior to the next Board meeting, I'll provide a specific summary that outlines by the two active parts of the three parts of Vision 21, we have the known enhancements, the business process analysis, and then the procurement for the larger system. For the two active parts, by particular detail, the expenditure and the expenditure by particular object, and then we can adjust it accordingly based on Board feedback.

MS. FLORES: Moving on. On page 9 I've got a chart that hopefully is large enough for you all to see. It identifies the Agency's expenditures by category, and as you can see on this page, the Agency's other operating, which I do provide detail on that, unfortunately you can't see it. That's our biggest category. Salaries, 28 percent of the Agency's expenditures; grants, 8 percent; professional fees, 6 percent; and last but not least, fuel supplies, utilities and pretty much everything else, 1 percent.

And finally, on the last page I've kind of given you a chart of our revenues compared to our

expenditures. Again, it just kind of repeats what, you
know, we all know at this time, and that is that the
Agency generates a lot more revenue than we expend. And
that concludes the month of expenditures.

Yes, ma'am.

MS. JOHNSON: With regard to the other
operating expenses, perhaps I've been looking at too many
budgets in our organization, but typically you see

operating expenses, perhaps I've been looking at too many budgets in our organization, but typically you see salaries and wages as being such a large part of expenditures, and we don't have any rent and we don't have any, well, to speak of, we have a little bit.

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But what -- 57 percent of our budget on other. Give us -- and I know that you probably have it broken down here, we just can't see it -- the other operating expenses include such items as.

MS. FLORES: Postal services, freight delivery of the license plates, we have membership dues, furnishings and equipment, computer software, computer equipment, subscriptions, in this category we also pay for our risk -- our insurance for our cars and for the buildings, that was here in the month of September for sure.

MR. WALKER: Where's your license plate contracts?

MS. FLORES: They all reside in the Office of

1	Administrative Services in this fiscal year. And last
2	MALE VOICE: He means from a budgetary
3	perspective.
4	MR. WALKER: Where is it in your number? Isn't
5	that isn't your license plates in there.
6	MS. FLORES: It's in other.
7	FEMALE VOICE: Okay.
8	MS. FLORES: It is in other.
9	MR. SERNA: The two biggest things are some of
10	that, plus that insurance verification is being carried in
11	here too.
12	MS. FLORES: That's right temporary
13	services.
14	MALE VOICE: it looks like Mr. Bray and
15	I got a magnifier here it looks like three million out
16	of the four million are what she said, postal and freight.
17	MR. SERNA: And that would be the license
18	MR. WALKER: Well, trucking's a good place to
19	spend it.
20	(General laughter.)
21	MR. SERNA: Yes, about three of the four is
22	postal and freight, and then another 338- is that
23	TexasSure, the insurance verification. Those are the
24	three biggest expenses. And we will get better. I had
25	whispered to Member Campbell that maybe we'll if you

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1 all allow me to spend some Vision 21 money to get a better 2 printer for our financial reports, then -- no, I'm just 3 kidding. 4 (General laughter.) 5 MR. WALKER: Vision 21, that can be an amendment. 6 7 MR. SERNA: Yes, sir. 8 MR. VANDERGRIFF: All right. Thank you, Linda. 9 MS. FLORES: Thank you. 10 MR. VANDERGRIFF: Okay. Any further questions? 11 MR. SERNA: Thank you. That'll be the end of 12 my report. MR. VANDERGRIFF: Okay. With that we've come 13 14 to the end our public portion of the agenda. We will have 15 a short Executive Session with Board only. And with that 16 I would ask one last time if there's any member of the 17 public that, on any item on our agenda, if they wish to 18 comment. 19 (No response.) 20 MR. VANDERGRIFF: Seeing none, I think you all for attending. We will obviously come back after 2.1 22 Executive Session to close the public portion of the 23 meeting. We do not anticipate any action items that we

will necessitate coming back into the public session to

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take care of.

And at this time, I, Victor Vandergriff --1 2 never mind, that's the certification part. This is the 3 script part, make sure I give this to you. Then we will go into Executive Session immediately. It is now 1:40 4 5 p.m. on November 9, 2010. And we will go into Executive Session under Section 551 -- excuse me, 551.074 to 6 7 discussion items under Agenda Items 4A and 4B, 5A1 and 5A2. 8 9 And for those of you in the audience that 10 actually do wish to stay, again, do not expect any public 11 action. I anticipate a very short session, 15, 20 12 minutes, and that we're reconvene to adjourn in open

And with that, we are adjourned from the public meeting, and we're into Executive Session.

(Whereupon, a recess was taken for Executive Session.)

MR. VANDERGRIFF: -- on November 9, 2010, the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken during the closed session. And with that I'd be pleased to entertain a motion for adjournment.

(Motion inaudible.)

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session after that.

MR. VANDERGRIFF: Mr. Gillman has moved to adjourn.

MR. RODRIGUEZ: Second. 1 2 MR. VANDERGRIFF: Mr. Rodriguez has seconded 3 the motion. And so with that please raise your right hand 4 in support of the motion. 5 (A show of hands.) 6 MR. VANDERGRIFF: Oh, I apologize. All of 7 those present have voted to adjourn, and members Walker 8 and Ms. Johnson -- Member Walker has voted for the 9 adjournment, and Ms. Johnson is absent, as well as Board 10 Members Rush and Butler. 11 Thank you for your attendance. Thank you 12 everybody.

(Whereupon, at 2:16 p.m., the meeting was

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concluded.)

<u>C E R T I F I C A T E</u>

MEETING OF: Texas Department of Motor Vehicles

4 LOCATION: Austin, Texas

DATE: November 9, 2010

I do hereby certify that the foregoing pages, numbers 1 through 207, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Motor Vehicles.

11/29/2010

(Transcriber) (Date)

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